Supreme Court, U.S.
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No. 09-714

IN THE

Supreme Court of the United States

JACQUELINE C. DU BOIS, INDIVIDUALLY AND FOR AND ON BEHALF OF HER MINOR SON, A. E. W.,
Petitioners

v.

JUDY L. WARNE, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS JUDGE OF THE 257TH DISTRICT COURT, HARRIS COUNTY TX; ALLYSON NASS BRUPBACHER, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS AMICUS FOR A. E. W. APPOINTED BY THE 257TH DISTRICT COURT, HARRIS COUNTY TX; RONIQUE J. BASTINE, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS AN OFFICER OF THE COURT OF THE 257TH DISTRICT COURT HARRIS COUNTY TX,
Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

JACQUELINE C. DU BOIS
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QUESTIONS PRESENTED

I. Whether Petitioner's claims sufficiently state a constitutional violation under 42 U.S.C. § 1983.

II. Whether Petitioner's pleadings were devoid of any statement of an equal protection violation under 42 U.S.C. § 1985.

III. Whether Petitioner's pleadings failed to aver she and her child suffered race based.

VI. Whether Petitioner's pleadings lacked a tendency to show the Respondents conspired.

V. Whether the prevailing jurisprudence on the Eleventh Amendment unconditionally prohibits Petitioner's claims against Respondent Warne in her official capacity.

VI. Whether under precedents defining and interpreting judicial immunity, Petitioner's cause of action against Respondent Warne in her individual and or her official capacity are barred.

VII. Whether the actions of the Respondents are nothing more than Petitioner's subjective belief of constitutional violations and no set of facts or evidence presented under prevailing law can prove deprivation of her and her minor child's rights.

VIII. Whether Petitioner's allegations of constitutional violations reach the level of a cognizable claim

IX. Whether in light of applicable laws, Petitioner's complaint and subsequent filings were so grossly insufficiently plead as to warrant dismissal with prejudice for failure to state a claim upon which relief can be granted in regard to all Respondents.

X. Whether Petitioner's argument that Respondent Bastine's Motion to Dismiss for Failure to State a Claim was untimely has merit.

XI. Whether because Petitioner alleges constitutional violations perpetuated in or about a state court under color of law, her request for redress can be nothing other than an appellate review of a state court decisions.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THIS CASE BY COURTS

The June 6, 2009 opinion of the United States Court of Appeals for the Fifth Circuit, 2009 U.S. App. LEXIS 12271, reprinted in the Appendix (A-1 - A-5), is unpublished.

The order of the United States District Court for the Southern District of Texas Houston Division Northern is reprinted at A-10 to A-12.

JURISDICTION

The judgment of the Court of Appeals was entered on June 8, 2009. (A-1)

The decision to deny both the Petition for Panel Rehearing and the Petition for Rehearing En Banc was filed on July 7, 2009. (A-40 - A-42)

This Court has jurisdiction under 28 U.S.C. § 1254(1).

The constitutionality of a State of Texas statute is drawn into question and 28 U.S.C. §2403(b) may apply; however, employees and or agents of that State are parties. Thus, in accordance with SUP. CT. R. 29.4(c), the initial document was not served on the Attorney General of Texas. Since the Court of Appeals refused to address Petitioner's claim that a section of the Texas Family Code was applied to her and her son in an unconstitutional manner and was an integral part in leading to her complaint in general, it is equivocal the Court of Appeals certified

to the Texas Attorney General the fact that the constitutionality of a statute of that State was drawn into question.

CONSTITUTIONAL PROVISIONS AND STATUTES

Citations:

U.S. Const. amend. 7
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Pertinent text is set out in the Appendix.

STATEMENT OF THE CASE

JURISDICTIONAL BASIS IN COURT OF FIRST INSTANCE

Petitioner's cause of action is one grounded in both federal questions and diversity of citizenship.

1. Plaintiff (Petitioner) claims federal jurisdiction of the District Court pursuant to the United States Constitution Article III § 2 which extends original jurisdiction to all cases arising under the U.S. Constitution and laws of the United States and to controversies between citizens of different states. Plaintiff is (Petitioner) a citizen of Kansas; all Defendants (Respondents) are Texas citizens.

2. Plaintiff (Petitioner)brought this suit pursuant to Title 28 U.S.C. §§ 1331, 1332 and 1343 for violations by the Defendants (Respondents) under color of law in their capacities as presiding judge, state appointee and officer of the court of the 257th District Court, Harris County, Texas of certain protections guaranteed to her and her minor son by the Seventh and Fourteenth Amendments and Article IV, section 2 of the United States Constitution. Petitioner meets the initial requirement of U.S.C. § 1332(a) for diversity purposes by seeking damages in excess of $75,000.

> "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."[1]
>
> . . . The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. . . The judicial power shall extend to ***all*** *cases*, in law and equity, *arising under the Constitution, the laws of the United States, . . . to controversies . . . Between citizens of different states . . .*[2]

Petitioner's diversity suit involving claims of constitutional violations cannot be heard in a state court.

STATEMENT OF FACTS

Petitioner obtained a final decree of divorce in 2002. In or about July 2007, Petitioner's ex-husband while residing in a Federal Bureau of Prisons halfway house retained the services of Respondent Bastine. Although at this time Judge David Farr[3] presided over

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[1] U.S.C. §1331.

[2] U.S. Const. art. III, §§1, 2 (emphasis added). *See also*, R:9-10.

[3] Judge Linda Motheral, divorce and initial proceedings. Judge Farr presided over the bulk of state litigation. Petitioner went before Associate Judge Patterson, former Amicus state

the proceedings, Respondent Warne appointed Respondent Brupbacher as amicus. (A-81 - A-83) Judge Farr moved to another court in December 2007 (A-84, A- 94), and Respondent Warne began hearing the case. The Respondents systematically stripped Petitioner and her child of basic constitutional rights under color of law.

On May 1, 2008 Petitioner filed a complaint in federal court against the Respondents for violations of her and her son's rights pursuant to the United States Constitution and Title 42 U.S.C. §§1983 and 1985. R:9-16. Judge Warne submitted a request to her husband, Doug Warne, also a Family Court judge, to recuse herself. (A-85) On July 3, 2008, Petitioner attended a federal scheduling conference. Although Judge Keith Ellison spent much time trying to convince Petitioner Du Bois this was a case of mistaken improper service, R:317-320, 322-324, and her best remedy was in state court, a trial date was set. R:216. (A-15 - A-16)

Respondents Bastine and Brupbacher continued to deprive Petitioner of her civil rights under color of law. She reiterated her request by filing a Motion for

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proceeding, one time. Petitioner has not filed any grievance against any of these state officials despite the fact they did not always find in her favor.

Injunctive Relief on July 31, 2008, R:243-47; only Respondent Warne filed a timely response. R:248-52

A non-evidentiary hearing on these two pleadings was held on October 2, 2008, during which there was little discussion on injunctive relief and much on the motions to dismiss. (A-13 - A-14) On this same date, Judge Ellison signed an order denying injunctive relief and dismissing with prejudice Petitioner's claims against all Respondents. R:271-72. (A-10 - A-11)

Petitioner filed a notice of appeal on October 24, 2008. R:274. An opinion filed on June 8, 2009, affirmed the federal district court's judgment. (A-1 - A-5) Petitioner's request for rehearing were both denied on July 7, 2009. (A-40 - 42)

ARGUMENT

REASONS FOR ALLOWANCE OF THE WRIT

1. The lower court's decision conflicts with decisions of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. (*Boyd v. Biggers*, 31 F.3d 279 (5th Cir. 1994); *Ex parte Young*, 209 U.S. 123 (1908); *Hafer v. Melo*, 502 U.S. 21 (1991); *Mays v. Sudderth*, 97 F.3d 107 (5th Cir. 1996); *McAfee v. 5th Circuit Judges*, 884 F.2d 221 (5th Cir. 1989) *McAlester v. Brown*, 469 F.2d 1280 (5th Cir. 1996); *Mireles v. Waco*, 520 U.S. 9 (1991); *Pulliam v. Allen*, 466 U.S. 522 (1984); and *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989)).

2. This proceeding presents an assertion of a judge

breaking the law. Crucial to upholding the public trust is a governmental entity's willingness and ability to police itself and others like it. An exercise of this Court's supervisory power is called for because the United States Court of Appeals for the Fifth Circuit departed so far from the accepted and usual course of judicial proceeding and sanctioned such a departure by the United States District Court for the Southern District of Texas, Houston Division. Petitioner's claim was summarily dismissed with prejudice, as are cases of this nature, because of the fear of future mass litigation from others similarly situated. The facts and applicable laws were either not considered at all or not considered in earnest because this controversy stems from domestic relations and family matters, disputes that are traditionally left to state courts. However, when constitutional rights are infringed and there is no avenue of recourse, continuation of the typical path erodes the judiciary by placing a sect, mainly family law judges and their minions, above supreme law.

3. This case also takes on a rather taboo topic of discrimination by a person of a set race against others from a subset of that same race. Petitioner Du Bois' claims of constitutional infractions are not only stem from the common race basis, but are also based on color, a more novel form of discrimination warranting this Court's interpretation.

I. PETITIONER'S ORIGINAL COMPLAINT IS INUNDATED WITH FEDERAL QUESTIONS; THUS, IT CANNOT BE SUMMARILY DEEMED TO BE SOLELY A REQUEST FOR REVIEW OF STATE COURT PROCEEDINGS.

Petitioner avers violations of constitutional rights guaranteed by Article IV, Section 2; the Seventh Amendment and the Fourteenth Amendment of the United States Constitution. R:11, 13. She states the Respondents' liability for their wrongdoings is conferred by Title 42 U.S.C. §1983. R:12, 14. In addition, there are allegations of conspiracy as set forth in 42 U.S.C. §1985. R:12. Petitioner also asserts the practice of family courts requiring a party who moves from one state to another to bear the cost of all visitations with a minor child is unconstitutional. It not only violates a persons right to travel, but in essence denies entitled individuals state mandated child support. R:13-14. Forcing Petitioner to pay any portion of cost for visitation was contrary to her final divorce decree. It is alleged the Texas Family Code was discriminatorily applied to her African American male child. R:14.

Respondents assert they do not subscribe to a "you move; you lose" philosophy of family law injustice. Brupbacher goes as far as to call the phrase a "common vernacular" but in the same breath claims to be unfamiliar with the concept. Such a practice is contrary to the boilerplate provisions on possessory conservator in Texas divorce decrees. Respondents actions and word memorialized by court reporters show they followed this rule in Petitioner's case. Any application of this practice interferes with the

fundamental right of travel of certain U.S. citizens based on gender and marital status. R:13-14.

To deny citizens the option of questioning the constitutionality of various rules and practices not only impedes but regresses judicial evolution. Rights that cannot be exercised are devalued to such an extreme that they become meaninglessness.

Petitioner is inquiring whether portions of the Texas Family Code relied upon by the state court are unconstitutional on its face or so broad with discretion as to incite and or justify discrimination prohibited by the constitution. Petitioner did not ask the federal district court to remand, vacate or reverse any ruling of the 257th District Court, Harris County, Texas. The Original Complaint is not styled or written as an appeal because that is not its intended purpose. R:9-16. The case of first instance is a cause of action founded on constitutional claims. The state case is an ongoing family law matter; to date, it is moving forward in state court. The two controversies are intertwined only for the short periods when it is alleged the Respondents misused and abused their state court positions to deprive Petitioner and her son of rights secured by state and federal laws.

Du Bois is not enthralled in a heated child custody battle as Warne repeatedly infers.[4] Du Bois is the sole managing conservator of her son and has been since her divorce in 2002. The evidence of state court records in the matter styled *In the Interest of A.E.W., a*

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[4] Brief (Warne) pp. 2-5, 9, 11.

minor child, shows only after Petitioner filed suit in federal court did Brupbacher and Bastine retaliate by questioning Du Bois' sanity[5] and actually instigating, rather than threatening, proceeding to have permanent custody taken from her, which Judge Frank Rynd[6] refused to entertain. Prior to Judge Farr's departure, the state case had centered around visitation with an alcoholic on supervised release, who snitched on drug dealers and who had no contact with the child for over two years due to federal detention.

No one, not even the Family Law Courts, wants involvement in a custody dispute. Warne's objective in willfully misconstruing the facts is to prejudice Du Bois and prevent her case from going forward.

II. PETITIONER STATED CLAIMS UPON WHICH RELIEF CAN BE GRANTED.

Petitioner enumerates forty-six claims stating federal infractions against her and or her son, specifically naming one of the three Respondents violator. For each lineated infraction, she cites the proper section of the United States Code giving authority to pursue civil liability. She also claims the imposition of any penalty or punishment for moving to another state is unconstitutional. R:72-78. Furthermore, she alleged discrimination against herself and her child, both of whom fall within suspect classifications. R:11, 14.

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[5] Petitioner is a board certified doctor in good standing to practice medicine in two states.

[6] Judge currently presiding over state case.

Brupbacher does not have immunity under Texas Family Code § 107.009 because she falls within at least one of its exceptions. R:90-91. Brupbacher falsely alleges Du Bois does not address the inapplicability of immunity for an amicus under the Texas Family Code. Du Bois refutes this assertion.[7]

A litigant is not required to muster all her evidence to survive a motion to dismiss. At the time of its filing, little to no proof has been presented.

Petitioner challenges the court of appeals affirmation of the district court's dismissal for lack of jurisdiction under Fed. R. Civ. P. 12(b)(6). Issues were presented to the court below specifically to review the jurisdiction of the lower court.[8] Issues regarding federal questions and diversity were before court of appeals but were not addressed at all or inadequately addressed.[9]

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[7] R:11-13, 90-91 (". . . maliciously orchestrated by defendants Brupbacher . . . willfully wrongful acts of the defendants . . . presented in bad faith by defendants Brupbacher . . . does not have immunity from civil damages in her capacity as an amicus attorney because her actions fall within one or more of the three exceptions . . . ").

[8] Appellant Brief p. 2

[9] *Id* at pp 2, 6-7.

III. A COMBINATION OF THE ALLEGED FACTS , WHICH THE LOWER COURT MUST VIEW IN A LIGHT MOST FAVORABLE TO THE PETITIONER, AND A LOOSE OR STRICT INTERPRETATION OF THE APPLICABLE LAWS INFERS RESPONDENTS' INFRACTIONS.

The Court of Appeals opines Petitioner alleged no factual basis tending to show Respondents Bastine and Brupbacher conspired with Judge Warne. Respondents' defense of "coincidences" is for a factfinder to hear and decide its validity.

Du Bois was forced to pay a court appointed amicus for work that was not done or over inflated hours of alleged work. The threats of jail and taking custody from her and giving it to her alcoholic, convicted felon ex-husband were means to extort money from Petitioner. (A-19 - 20, A-23 - 25, A-38 - 39, A-81 - 83, A-86 - 87) Respondents' concerted actions under the guise of state court proceedings obliterated Petitioner and her son's status as U. S. citizens.

The lower court found Petitioner's complaint to be no more than a "subjective belief the respondents sought to violate her rights". The constitutional violations are real. At the appellate stage, courts must view all of Petitioner's allegations as true.

Petitioner was under duress from threats of jail and endangerment of her child. Respondents attempt to portray Petitioner as being in agreement with the crimes against her and her son. Nothing Petitioner did legally vitiated violations of her and her child's civil rights.

In her complaint, Du Bois claimed she was deprived of her right to a jury trial; although Brupbacher asserts Petitioner did not.[10]

The State of Texas may confer additional privileges upon persons within its borders, but it may not diminish right given by the United States Constitution or laws enacted by the federal government.

> . . . This Constitution, and the laws of the United State which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. . . .
>
> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .[11]

Brupbacher reasons Du Bois was never entitled to a jury trial even if requested because the Texas Family Code or local state court rules did not confer such a privilege in family law matters. The family court system is dismissive to the right to a jury trail Court documents routinely state a jury trail was waived when it was not. For the 01 May 2008 hearing, Du Bois requested and paid the fee for a jury trail to no avail.

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[10] R.11-12, 91.

[11] U.S. CONST. art. VI; U.S. CONST. amend VII.

(A-21 - A-22)

Respondents used the powers of a state family law court to create a sham that extorted and distressed Petitioner. The ploy ran from the appointment of Brupbacher by Warne through all proceedings involving payments to Brupbacher or Bastine. These were mechanisms to prolong Du Bois' interactions with the state court in an unlawful scheme to take more and more of Petitioner's personal funds without due process.

Petitioner challenges Respondents convenient accusation that she is no more than a disgruntled state litigant who was not intelligent enough to appeal an unjust state court decision in a state appellate court. R:238, 291-94, 317-21. All of Du Bois' federal court papers champion her and her son's rights guaranteed under the U.S. Constitution and other federal laws. Furthermore, Respondents, all experienced family court lawyers, knew most of the unlawful state orders in question were temporary, thus, untouchable by interlocutory appeal pursuant to sections 105.001(e) and 109.001(c) of the Texas Family Code.

Before Bastine, Brupbacher and Warne came into the picture, Du Bois attended all court proceedings in the state matter. She has even shown for judicial events that did not require her presence over the years to insure her child was protected from psychological or physical harm. Her travels are well documented.

Respondents knew or should have known the hearings were bogus. It is only after all three Respondents became players in the state litigation for some inexplicable reason Du Bois' attendance became an issue. Petitioner denies her, "entire case is based on the fact she failed to attend two hearings" nor does she complain, "she failed to attend the hearings".[12] She states without reservation she was under no legal obligation to attend the falsified proceedings. One cannot fail to do a thing if one is under no requirement to do said thing.

IV. TO DISMISS PETITIONER'S CLAIMS AGAINST RESPONDENT WARNE BECAUSE PETITIONER ALLEGED NO ACTIONS BY WARNE WERE NONJUDICIAL IN NATURE WHEN THIS WAS DONE, ALTHOUGH UNNECESSARILY, DEFIES LOGICAL CONSTRUCTION AND CONTRADICTS THE LOWER COURT'S OWN INTERPRETATION OF THE LAW.

Respondent Warne's behavior fails to meet the minimum requirements to be judicial acts under the four-pong test in *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1996). The acts did not arise directly out of a visit to the judge in her official capacity. Evidence exists showing not only was Petitioner not present during the occurrence of some of the acts of which she complaints, but strangely neither was her ex-spouse, her supposed accuser. *McAfee v. 5th Circuit Judges*, 884 F.2d 221-22 (5th Cir. 1989) (judicial immunity conditional on acts having been performed

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[12] *Id*

in judicial capacity).

Pursuant to the findings in *Boyd v. Biggers*, 31 F.3d 279 (5th Cir. 1994), "a judge's immunity is overcome only for actions not taken in judicial capacity or for action taken in complete absence of all jurisdiction". The conjunction, or, denotes alternatives. When it joins two options - one, the other or both may be chosen to make the statement true. The lower court acknowledges Petitioner asserted and explained why Respondent Warne lacked all jurisdiction. Therefore, Petitioner would have no requirement to aver nonjudicial actions, despite having done so. Thus, to dismiss Petitioner's claims against Respondent Warne because Petitioner alleged no actions by Warne were nonjudicial in nature defies the lower court's own reasoning and interpretation of the law.

Petitioner's detailed assertion that moves Respondent Warne out of the realm of judicial immunity is misconstrued as an argument of improper behavior. However, this impropriety is trivialized by the court of appeals. Respondents conduct rose to the level of actionable violations of law.

The Mays Court would very likely find Warne's actions "erroneous, malicious, or in excess of her authority". *Mays v. Sudderth*, 97 F.3d 107 (5th Cir. 1996). However, Warne's behavior was also unlawful. Petitioner argues far more than improper conduct; she assert unconstitutional behavior by a judge who breaks the very state and federal laws she has sworn to uphold.

If Warne was without all authority, a judicial immunity challenge is overcome. However, the lower court goes against the norm and holds in the case at bar the lack of jurisdiction relates only to putting forth an argument about the impropriety of Warne's actions. Petitioner mainly argues the constitutionality of Warne's acts, which if determined to be unconstitutional are necessarily improper because they offend the supreme law of the land.

Du Bois states numerous claims upon which relief can be granted in her complaint and subsequent filing.[13] A review of the four corners of the complaint[14], shows Petitioner does not bring suit, "solely on the basis of . . . judicial acts"[15]. Whether all Warne's behavior is exclusively under the auspices of judicial acts is a point of contention.

Du Bois asked for injunctive relief in both her complaint and Motion for Injunctive Relief.[16] This Court holds a judge is **not** absolutely immune from a suit for prospective injunctive relief.[17]

No person is above the law even if civil atrocities are committed by a judge and attorneys in a state court. Judicial immunity has prerequisites for its application, namely, the acts in question must be judicial in nature

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[13] R 9-16, 72-78.
[14] *Id.* at 9-16
[15] Appellee Brief (Warne) p. 5
[16] R.15, 243-247.
[17] *Mireles v. Waco*, 502 U S. 9, 11 (1991) *Pulliam v. Allen*, 466 U.S. 522, 536-543 (1984)

and the accused must have had all jurisdiction at the time of the actions.[18] Warne's claim of judicial immunity must fail because she acted without all jurisdiction.[19]

At the time of the series of Harris County, Texas court events, Du Bois was domiciled in Kansas. Nothing was appropriately done to bring the person of Du Bois legally before the Texas state court. Particularly in regard to a contempt hearing where she is looked upon in the same light as a defendant in a criminal case whose liberty or property is at risk.

Of great importance is the true intent of judicial immunity. Its purpose is by no means to protect or benefit a malicious or corrupt judge. Instead, the public is its benefactor.[20]

Courts cannot create exceptions on a whim in specific types of cases. The law cannot be fickle, unstable and unpredictable that it causes lost of the

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[18] *Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994) (judicial immunity requires performance of a judicial function) and *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (judge not immune from liability for nonjudicial actions, those not taken in the judge's judicial capacity, nor is a judge immune for actions, even if judicial in nature, taken in complete absence of all jurisdiction). *Mays v. Sudderth*, 97 F.3d 107, 111 (5th Cir. 1996) (judge subject to liability if acted in the "clear absence of all jurisdiction" (quoting *Stump v Sparkman*, 435, U S. 349, 356-57)). *McAfee v 5th Circuit Judges*, 884 F.2d 221, 222 (5th Cir. 1989) (judicial immunity conditional on acts having been performed in judicial capacity)

[19] *Mays v. Sudderth*, 97 F 3d 107, 114 (5th Cir. 1996)

[20] *Id.* at 111 (quoting *Pierson v. Ray*, 386 U.S. 547, 554).

trusts and confidences of the public. Judicial Immunity is not entirely a matter of law; it also entails questions of fact. It is not an automatic, absolute defense afforded to all judges no matter the severity of the indiscretions. Warne lacked at least one of the fundamentals for a valid judicial immunity defense.

The *McAlester v. Brown*, four-part test fails because two prongs are not satisfied - the acts complained of are not normal judicial functions and the acts did not arise directly out of a visit to the judge in her official capacity.[21] Warne herself proclaims Du Bois was not present at either of the hearings where jurisdiction was lacking.[22]

Warne's statements that Du Bois does not contest the judge's claims of judicial capacity and jurisdiction are untrue.[23]

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[21] 469 F.2d 1280, 1282 (5th Cir 1996).
[22] Brief (Warne) p. 4
[23] *Id.* at p. 9.

V. PER HOLDINGS OF THE U.S. SUPREME COURT, THE COURT OF APPEALS CANNOT RECONCILE PREVENTING PETITIONER'S SUIT FROM MOVING FORWARD ON THE GROUNDS IT IS BARRED BY THE ELEVENTH AMENDMENT WHEN SHE HAS ASKED FOR INJUNCTIVE RELIEF, ASKED FOR DECLARATORY RELIEF, SUED RESPONDENTS IN THEIR OFFICIAL CAPACITIES AND SUED THEM IN THEIR INDIVIDUAL CAPACITIES.

This Court has ruled the Eleventh Amendment does not bar suits where a claimant asks for injunctive relief and sues a person in her official capacity[24], nor is it a prohibition to suits in which state officials are sued in their individual capacities. Petitioner's case meets all the criteria that prevent an Eleventh Amendment bar to her claims.

The lower court did not follow the usual notions of judicial immunity and interpretations of the Eleventh Amendment.

In *Davis v. Tarrant County, Tex.*, 2009 WL 931169 (5th Cir. Apr. 8, 2009), the court found the petitioner's claim for prospective declaratory relief, which would have shielded him from an Eleventh Amendment

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[24] *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989) and *Ex parte Young*, 209 U.S. 123, 159-60 (1908) (state official when sued in official capacity for injunctive relief is a person under § 1983 because such litigation is not treated as actions against the State). This Court also recognized a judge is not absolutely immune from suit for prospective injunctive relief in *Mireles v Waco*, 520 U.S. 9, 11 (1991) and *Pulliam v. Allen*, 466 U.S. 522, 536-43.

bar, was moot. The court of appeals has made no such finding in regard to Petitioner Du Bois' requests for injunctive and declaratory relief.

Petitioner's suit should move forward because it is not barred by the Eleventh Amendment. *Hafer v. Melo* supports Petitioner's position.[25] The holding speaks volumes.

> . . . *state officials, sued in their individual capacities, are "persons" within the meaning of § 1983. The Eleventh Amendment does not bar such suits, nor are state officials absolutely immune from personal liability under § 1983 solely by virtue of the "official" nature of their acts.*[26]

Milliken v. Bradley also contains this rule of law.[27]

The lower court holds Petitioner's injunctive relief claims do not shield her from an immunity bar as they would normally do. Du Bois' requests were held to be no more than an implication of a review of state court orders, not a plea to prevent further infractions upon her and her child's rights.

Warne provided an incorrect interpretation to the

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[25] 502 U.S. 21 (1991)

[26] *Id.* at 31 (emphasis added). *E.g., Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989) and *Ex parte Young*, 209 U.S. 123, 159-160 (1908) (state official when sued in official capacity for injunctive relief is a person under § 1983 because such litigation is not treated as actions against the State).

[27] 433 U.S. 267, 289-90 (1977).

lower courts of Du Bois' Motion for Injunctive Relief. The Original Complaint was filed on 01 May 2008. R:9-16. Judge Warne recused herself shortly thereafter. (A-85) Du Bois filed her Motion for Injunctive Relief on 31 July 2008 because Warne's act of separating herself from the other respondents did not deter Bastine and Brupbacher from further deprivation of Du Bois' rights. Only Warne filed a timely response to a pleading that was directed towards her co-conspirators.

In no way did Petitioner's Motion for Injunctive Relief request the district court, "enjoin Judge Warne from making certain orders in the ongoing state court matter . . .",[28] because at the time of its filing the state case had already been officially assigned to another judge.

The context in which Warne mentions her recusal has no bearing on the issues at hand.[29] Removing herself from the situation and giving the appearance of putting some distance between her co-conspirators, does not undo any wrongs nor did it prevent the two remaining Respondents from continuing their wrongdoings.

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[28] Brief (Warne) pp. 3-4.

[29] *Id.* at p 10.

VI. THE FEDERAL VIOLATIONS ARE NOT SO INTRICATELY INTERTWINED WITH STATE MATTERS IT IS JUDICIALLY IMPOSSIBLE TO EXTRICATE THEM.

The lower court holds Petitioner's claims are "intertwined with alleged procedural errors in the state court". State and federal courts are very proficient at extracting federal issues from state claims and effectively adjudicating each in their respective forums. The constitutional violations cannot be so intertwined with state matters that extrication is impossible.

Petitioner does not seeks an improper review of state court proceedings, but rather looks to adjudge the offenses against her and her child. The fact they are a state judge and two other attorneys adds credence to Petitioner's claims of federal law violations done under color of law.

VII. PETITIONER SHOULD NOT BE DENIED ACCESS TO JUSTICE FOR THINGS OVER WHICH SHE HAD NO CONTROL - THE TIME AND PLACE WHERE RESPONDENTS SLATED HER TO SUFFER THE DEGRADATION OF HER AND HER SON BEING DEPRIVED OF THEIR RIGHTS TO FAIR AND EQUAL TREATMENT GUARANTEED BY FEDERAL LAWS COUPLED WITH THE DISFAVORED NATURE OF AND PROPENSITY TO DISMISS SUITS AGAINST JUDGES, ESPECIALLY ONE BROUGHT BY A MEDICAL DOCTOR.

Some litigation has undue emphasis on the <u>who</u> (a judge) allegedly committed the illegality and <u>where</u> (courtroom setting) it was done, which de-emphasizes the <u>what</u>, the constitutional violations. Petitioner's suit and those bringing similar claims are

destined to fail before reaching a proof stage. Petitioner's theory of the case includes a conspiracy component, as well as other purported infractions of federal laws. Petitioner's other allegations, such as *the assertion a custom practiced by a state court* judge is unconstitutional and the application of a state law dispensed in a discriminatory manner, were ignored by both lower courts.

Petitioner did not imagine the events that are violations of the rights due her and her child. The fact that much of her evidence is in the form of official state court transcripts and physical documents presented to a state court should enhance the credibility and permissibility of the materials in subsequent judicial proceedings. Instead, here, they are used to block Petitioner's attempt to redress cognizable wrongs.

A state court is not a safe harbor for those who have an absolute intent to deprive certain classifications of people, some specifically protected by federal laws, of their civil liberties. Petitioner and her son were denied rights all U.S. citizens are due. Respondents had complete power over how the illegalities would transpire. Petitioner's day in court is being taken because she had no control, over the time and place where she and her son were to be deprived of their right to fair and equal treatment guaranteed by federal laws.

Complainants from Texas Family Law Courts claiming unconstitutional treatment cannot avail themselves to any state court due to lack of subject matter

jurisdiction. Such citizens are summarily dismissed from lower federal courts. Less they prevail in this Court, after much time, effort and funds are expended, there is no justice for crimes committed against them. The rights due Petitioned and her son by shear birth and guaranteed by the United States Constitution have been infringed, and she seeks to hold the violators accountable.

VIII. PETITIONER ALLEGED RACE-BASED DISCRIMINATION UNDER § 1985 AND A CONSPIRACY THEORY UNDER CIVIL RIGHTS STATUTES.

The court below found Petitioner alleged no basis for her allegation she or her son suffered race-based discrimination, Petitioner did not state an equal protection violation under § 1985, and did not plead operative facts to sustain a conspiracy claim under civil rights statutes.[30] Petitioner's Original Complaint (emphasis added) contradicts:

> . . . defendants, perhaps more so in the instance of Defendant Bastine, feigned service by mail . . . all defendants were keenly aware that any proceedings . . . in Plaintiff's absence would infringe on her rights . . . Defendant Brupbacher was seeking an additional $1,500 payment from

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[30] *Mills v Criminal District Court No 3*, 837 F.2d 677 (5th Cir. 1988); *Hale v. Harney*, 786 F.2d 688 (5th Cir. 1986). Judge Davis also on this panel where non-prevailing plaintiff-appellant was a medical doctor; *Lynch v Cannatella*, 810 F.2d 1363 (5th Cir. 1987).

Plaintiff . . . She is an *African American* female who was denied ***equal protection*** under the laws . . . with the intent to deny Plaintiff the ***equal protection of the laws*** . . . Petition for Writ of Habeas Corpus in the late afternoon on January 8, 2008, a mere one day before the court setting . . . order for a capias for her arrest . . . Defendants Bastine and Brupbacher's intentional failure to give sufficient service of process for the December 12, 2007 hearing is the catalyst for the violations of Plaintiff rights. In her discriminatory and bias ruling, Respondent Warne held Plaintiff was not given proper notice for the proceeding. However, she would have had to come to court to so state. In addition, she found as of February 14, 2008, Plaintiff had adequate notice and implied this notice was retroactive. . . sentenced Plaintiff to 120 days in the county jail. One condition of Plaintiff's suspension commitment was the payment in excess of $3,000 to defendants Brupbacher and Bastine. . . When Plaintiff paid any portion of the more than $3,000 . . . she was deprived of property without due process. . . custom of summarily ordering a party who moves from the state of Texas to pay all cost incurred for the minor's visitation across state lines interferes with a U.S. citizen's fundamental right to travel. . . unlawful ***penalty or fine on only certain classes of people, primarily women and single or divorced persons***, for changing their domiciliary . . . ***specific to Plaintiff's case, obliterates the state mandated child support*** . . . Defendants Bastine and Brupbacher vigorously requested the Court to force the Plaintiff to pay such travel cost.

> Defendant Warne agreed . . . Prior to the December 12, 2007 hearing, Associate Judge David Farr presided over the bulk of the proceeding . . . Shortly before this date, he moved to the 312th Judicial District Court. . . Defendant Warne who appointed Defendant Brupbacher as amicus attorney . . . Defendant Warne bringing Defendant Brupbacher into the case was a means to acquire substantial funds from the Plaintiff under color of law. The Texas Family Code is being applied in a discriminatory, bias manner in regard to A. E. W., a *Black* male child, in violation of his right to ***equal protection under the laws*** . . .

Petitioner stated a claim of deprivation of rights under Title 42 U.S.C. § 1985(2) AND (3).[31]

Respondents set forth a stance Petitioner and her son are not entitled to equal protection of state and federal laws. Petitioner's claim is not so grossly plead it is legally insufficient.[32] There is no provision in 42 U.S.C. § 1985 that Brupbacher must have "authority to make orders or decisions regarding the outcome of the civil case" to violate this statute.

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[31] R.12-14 (" . . deny Plaintiff the equal protection of the laws. Plaintiff was deprived of having and exercising rights and privileges of a citizen of the United States. . . means to acquire substantial funds from the Plaintiff under color of law. . . a Black male child, in violation of his right to equal protection under the laws.").

[32] Brief (Brupbacher) p. 13

Respondents conspired to and did violate Petitioner Du Bois' constitutional rights under color of law. The conspiracy includes, but is not limited to, failure to give proper notice of at least two state court proceedings.

Several fallacious hearing, including those held on 12 December 2007, 09 January 2008 and 14 February 2008[33] and their corrupt by- products are in question. These proceedings were recorded.

Special note is given to the 09 January 2009 proceeding. The Petition for Writ of Habeas Corpus and Enforcement of Possession Order was and or Access and Order to Appear was filed on 27 December 2007. A true copy of the pleading should have been served on Du Bois on this same date. Tex. R. Civ. P. 21. The Precept (Non-Resident) was issued on 03 January 2008 and faxed to KIS, Inc, the process server, on 08 January 2008. The Writ of Habeas Corpus was issued on 31 December 2007 and contained very odd errors, such as commanding service on 27 December 2007, a day that had pasted ; ,Motheral, rather than Warne's name and commanding Du Bois bring her child to court on 09 January 2007, a year before. The writ was faxed to the process server on 02 January 2008. (A-26 - A-37). If this hearing were legit, under state law, Petitioner could not have been served no less than 20 days before such a proceeding. Tex. Fam. C. 157.062(d)(1-2).

Another element of the conspiracy is the actual

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[33] R:10, 12-13

discriminatory appointment of Brupbacher as *amicus* attorney.[34] Brupbacher's claim of not substantially influencing if and when hearings, even trials, are conducted can be dispelled when Petitioner waives specific attorney client privileges and several lawyers less they be willing to perjure themselves and or risk exposure to judicial misconduct for the benefit of Brupbacher, testify her approval or disapproval determined if requests for hearings were honored in Warne's court. This power allowed Brupbacher to delay resolutions and continue to get paid with the assistance of Warne for little or no work by giving false statements in open court and or presenting fraudulent invoices, copies of which are in Du Bois' possession.

A conspiracy need not be one contiguous flow of incidents. Some dealings may be separate and independent of others. Each and every co-conspirator is not required to be directly involved in all aspects of every segment of the grand scheme. Whether the participants in a meeting, discussion or actions were all three Respondents or some permutation of them, the goal was the same - to violate the rights of Petitioner, a divorced African American female, and her male African American child and to obtain illegal, indefinite amounts of monies from her under color of law.

The conspiracy allegation is only one facet of the claims against Respondents. Du Bois needs **no** conspiratorial undertone to succeed on her 42 U.S.C.

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[34] *Id* at 14.

§ 1983 cause of actions.[35]

By 04 June 2008, Judge Rynd is presiding over the state case. He immediately recognized Respondent Brupbacher's instrumental role in manifesting the problems culminating in the dispute being transferred to him. His first order of business was to remove her as *amicus* attorney. He also explained to Respondent Bastine, it was not kosher for an *amicus* to testify against a party and he refused to allow Brupbacher before his bench for that purpose despite Bastine's eagerness and protest.

Respondent Warne deceived the lower courts by inferring the controversy between the state parties was one of permanent child custody when in fact it regarded visitation with an admitted alcoholic, who was recently released from federal prison.

Petitioner's case is not based entirely on a fraudulent 12 December 2007 state court hearing concocted by Respondents. That proceeding was but one in a series of events that together created an avalanche of civil injustices against Petitioner and her child. Under current laws, Petitioner could not default at this disingenuous gathering. She was under no legal authority to appear. Petitioner's absence gave Respondents a vantage point in that this portion of their plan was quick and smooth since her rights could be annihilated without protest or objection. A jury will ascertain from the Respondents own

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[35] R:12-14, 72-76, 78.

statements and actions that in person or from afar, Petitioner and her son's rights were going to be violated at this place and time.

Certain parties' right to sufficient notice is not recognized in Judge Warne's Court. If necessary, petitioner will waive certain attorney-client privileges to present evidence, mainly written communications, which will show an attorney before Judge Warne would rather argue the incompetence of his office staff or his own inadequacies before stating the undeniable truth that his client was not served proper notice.

Respondents refer to a certified mailing they deem is lawful notice. (A-91- A-93) However, Petitioner contest this letter dated 05 December 2007 was **not** simultaneously filed with the state court prior to 12 December 2007 and consistent with the Texas Rules of Civil Procedure, specifically Rule 21, it gave no more notice than a blank piece of paper.

The correspondence speaks of a continuation (continuance). Petitioner's ex-husband began hauling her into court in June 2007 after being in prison for over two years. From June to September 2007, the last time Petitioner appeared before Judge Far, there is no record found that was closed out indicating there was any motion or matter left unresolved and pending future hearing.

The United States Post Office first attempt to deliver the letter, postmarked by a commercial postage meter label, was on 10 December 2007. (A-88 - A-90) This Court's own Rule 29 anticipates and thwarts the

potential danger of manipulating or feigning timeliness if any and all manner of persons are given the option of self metering mail on one day and depositing it into a mail system on a different date.

At trial, Respondents would be able to enlighten the judge and jury of the illusive section(s) of the Tex. R. Civ. P. in effect in 2007 permitting the "informal notice . . . via electronic mail" of which they speak but is not found on the all inclusive list of acceptable methods of service. *See* Tex. R. Civ P. 21a.

Respondent Brupbacher asserts Petitioner did not inform the state court in writing of her lack of sufficient notice. Yet, Petitioner filed with Judge Warne's court and served on both Respondents Bastine and Brupbacher a pleading stating as much. (A-77 - A-80) The court reporter's record (transcript) indicates this filing was noted. Documentation of this kind demonstrates all Respondents knew Petitioner did not receive proper notice of the 12 December 2007 hearing. Respondent Warne will admit this on the record at the 14 February 2008 proceeding. This transcription will illustrate how she then downplayed this admission by legislating impromptu rules specific to Petitioner, e.g., the retroactive nature of notice, the requirement a challenge to notice must be done in person and a *pro se* litigant must be held to the exact same standards as an attorney.

An intricate part of Respondents' plot was to use the state court's time and resources to draw out Petitioner's state case to extort money from her for a substantial period. The threats to take her son if she

were incarcerated on fabricated charges was a means to an illicit end.

Warne discriminatorily appointed Brupbacher, under the pretense of discretion. The African American parents of a male child who excels in math, plays chess and tennis, runs cross country and is an active boy scout are forced to pay for an attorney to assist the state court while Caucasian parents of children who are at risk of physical or sexual abuse or even death are not.

In furtherance of the conspiracy, Warne used her influence and position as a state judge to insure Du Bois was required to pay the other two Respondents. In the case of Brupbacher especially, they were guaranteed compensation for falsified hours of little or no work.

Warne habitually, without hesitation, granted Brupbacher uninhibited access to funds Petition was force to deposit indirectly[36] into an account owned, operated and or controlled by the State of Texas.

The paper trail inevitably leads to portions of the payments returning to Judge Warne as outright campaign contributions to her, her husband and or some other Republican judge, such as her associate judge, and or in the form of solicitations to others

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[36] Contrary to the orders, Brupbacher was paid directly She may have deposited the money into "her trust account". Orders permitted her to withdraw immediately an amount nearly equal to or in access of the payment ordered

appearing in her court for such illicit donations.[37]

Warne emphatically states via an appointment as *Amicus* attorney Brupbacher "**represented**" Du Bois' minor son.[38] The Family Court system leads parties to believe this fallacy. It was not until harm was exuded on her child and after thousands of dollars wasted that Petitioner discovered she was being mandated to pay for alleged legal services purportedly to assist Warne's court.

Contrasting definitions of *Amicus* attorney and Attorney *ad litem* provide the former's loyalty lies with the court, not the child. The duties of undivided loyalty and competent representation are mentioned only in the meaning of Attorney *ad litem* and omitted from the denotation of *Amicus* attorney.[39] Warne appointed her cohort into a quasi state job. An isolated part of society, i.e. people like Du Bois and others similarly situated, are compelled to pay Brupbacher's salary.

A lay person might be tricked into believing the job of an *Amicus* attorney is one thing when in reality it is something totally different; it is unfathomable that Judge Warne was at any time under the impression Brupbacher "**represented**" the minor child.[40]

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[37] Even the mediators the family law courts appoint are regular campaign contributors. Petitioner has been forced to attend and pay for three mediations.

[38] Brief (Warne) p. 4 (emphasis added)

[39] Tex. Fam. Code 107.001(1-2).

[40] Brief (Warne) p. 4 (emphasis added).

Appointing Brupbacher as an amicus rather than an ad Litem but speaking as if she were the latter was crucial to the trickery. Parties would be less likely to protest continuously paying for an attorney they thought represented their child's best interest rather than paying for the court's attorney. In addition, it shielded Brupbacher from any duty an attorney owes a client because in essence she had no real client or in advising Warne, her client was the state court.

Du Bois' 31 July 2008 Motion for Injunctive Relief details how Bastine and Brupbacher continued to violate her constitutional rights under color of law after the filing of the complaint on 01 May 2008.[41]

Warne puts forth the illogical postulate that the act of one co-conspirator abandoning the scheme creates the legal and or factual impossibility of the two remaining co-conspirators' continual participation in the ongoing conspiracy.[42] If a jury holds Judge Warne's recusal rises to the level of abandonment, it would not be a stretch to find her opposition to Du Bois' Motion for Injunctive Relief was a bold reentry into the plan.[43]

When Du Bois filed her motion, she was very aware Warne had recused herself. In fact by then, Du Bois had made several appearances before Judge Rynd. Thus, Du Bois would have no reason to ask the district

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[41] R·9-16, 243-46

[42] Brief (Warne) pp. 4, 10-11.

[43] R·248-252

court to stop Judge Warne from signing any further orders in the state matter.[44] The pleading seeks to enjoin only Bastine and Brupbacher from bringing their conspiratorial devices to fruition again and again.[45] Warne's interpretation of the Motion for Injunctive Relief, i.e. her recusal righted injustices and deterred any further wrongs, is farcical.[46]

IX. PETITIONER'S CLAIM IS NOT AGAINST THE STATE OF TEXAS NOR A REQUEST FOR APPELLATE REVIEW OF A STATE CASE.

Petitioner is not impermissibly suing the state of Texas nor does Petitioner seek an improper review of a state court proceeding. She desires examination of constitutional violations against her and others who are similarly situated.

Du Bois does not seek review of a state court's orders.[47] Her complaint is the existence of the unlawful order itself, who made it come to pass, how and why. This controversy is between her and a rogue judge and her two attorney accomplices, ***not*** the State of Texas. Her prayer is to hold Respondents accountable for their unlawful acts. Though it may sound cliché, in so doing she desires to prevail in her suit not only for her and her son's sake, but also to deter and prevent others like her from suffering the same unconstitutional violations.

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[44] Brief (Warne) p. 3.
[45] R:248-252.
[46] Brief (Warne) p 11.
[47] *Id.* at 13

Records of acts committed in conjunction with state hearings conducted under color of law, outside the scope of judicial authority are evidence of the wrongs Respondents deliberately, knowingly, willingly and maliciously perpetuated against Petitioner.

Du Bois' claims, as well as those of any other party to a suit, should never be "stripped of their essentials" as Warne urges this lower court to do so she can gain an unjust advantage.[48]

Constitutional violations cannot be totally ignored or become temporary, case specific exceptions to the exceptions of the rule of law simply because the infractions occurred during a family law court case.

Petitioner as plaintiff in the orginal filling is master of her suit. She determines who to sue and on what grounds. She also decides when to commence litigation with few restrictions, a contemporaneous state case not being one of them.

Contrary to Warne's assertion,[49] Du Bois' claims against Warne are not, in essence or otherwise, claims against the State of Texas.

X. PETITIONER'S CLAIM IS PLAUSIBLE.

The Court of Appeals insists the Petitioner did not plead "enough facts to state a claim to relief that is

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[48] Brief (Warne) p. 12.

[49] *Id.* at 10-11.

plausible on its face". *In re Katrina Canal Breaches Litig.*, 495 F.3d 191 holds the "factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true". *Bell Atl. Corp. v. Twombly*, 550 U.S. 544. The everyday, ordinary meaning of the word, plausible, is believable.[50] Yet, the Court must by its very own prior rulings accepts all allegations in the complaint as true, even if they are doubtful and therefore are not speculative or theoretical.[51] Petitioner's case should not have been dismissed based on the plausibility or even the implausibility of her claims.

XI. RESPONDENT BASTINE'S 12(b)(6)MOTION WAS UNTIMELY BECAUSE IT DID NOT FOLLOW THE DUE ORDER OF PLEADINGS AND IT DID NOT WARRANT RULE 12(c) CONSIDERATION.

Bastine first responded to the complaint by filing an answer, R:47-54, later, she filed a Motion to Dismiss and Alternative Motion for Summary Judgment. R:144-186.

Petitioner filed her Original Complaint on May 1, 2008. Respondent Bastine filed an unsigned paper entitled "Defendant's Original Answer" on May 30, 2008 (far beyond the allotted 20 days to answer). On June 03, 2008 (even further past the deadline to file an answer), she filed a signed version of that pleading, serving Petitioner with a copy of the same on or after

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[50] WEBSTER'S NEW COLLEGIATE DICTIONARY 881 (ed 1977)
[51] *Id.* at 1209

June 20, 2008. It was not until June 23, 2008 that Respondent Bastine filed "Defendant's First Amended Original Answer" and "Defendant's Motion to Dismiss and Alternative Motion for Summary Judgment". Of concern is the amended pleading is the original except the statement, "Further, Bastine asserts that Plaintiff under Federal Rules of Civil Procedure 12(b)(6) has failed to state a claim upon which relief may be granted" is appended to all but one[52] of her enumerated responses found in the original version.

The opinion of *Jones v. Greninger*, 188 F.3d 322 (5th Cir. 1999) does not give a detailed timeline of the pleadings but because of the outcome it is doubtful it is as convoluted as the preceding recitation. In addition, FED. R. CIV. P. 12(c) mandates a Motion for Judgment on the Pleadings is permissible after the pleadings are closed. At least nine other motions were filed after Respondent Bastine filed her Defendant's Motion to Dismiss and Alternative Motion for Summary Judgment.

Summary judgment is inappropriate for this controversy because there are material issues of fact.

Bastine's Motion to Dismiss for failing to state a claim should not have been considered because it did not follow the due order of pleadings.

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[52] Bastine generally denied Petitioner's Statement of Case

CONCLUSION

Petitioner's complaint and subsequent pleadings assert there is evidence with the potential to prove Respondents violated Petitioner and her son's constitutional rights. Du Bois' complaint should not have been dismissed with prejudice for Failure to State a Claim. Fed. R. Civ. P. 12(b)(6). Like the petitioner in *Hishon v. King & Spalding*, 467 U.S. 69, 78-79, Du Bois' complaint states a cognizable claim and she is entitled to her day in court to prove her allegations. Petitioner should be afforded the opportunity to present evidence to a jury of Respondents' peers.

Three attorneys, one of whom is a state judge, committed illegal acts. To give them special treatment simply because they are jurists does not uphold the public trust. The location of where the constitutional infractions occurred and the titles or professions of the perpetuators are not impossible challenges to proof of the wrongs.

Whether under legal analysis or in the interest of justice, the court of appeals decision affirming the district court should be vacated. The order granting all motions to dismiss or for summary judgment and denying injunctive relief should be reversed and the case remanded with instructions that Du Bois is entitled to her day in court and until that time, injunctive relief is proper.

Petitioner respectfully prays the Court grant the petition.

This Petition for Writ of Certiorari is respectfully submitted by the undersigned.

JACQUELINE C. DU BOIS
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APPENDIX

United States Court of Appeals
Fifth Circuit
FILED
June 8, 2009

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-20682
Summary Calendar

JACQUELINE C DU BOIS, Individually and for and on behalf of her minor son AEW,

Plaintiff-Appellant

v.

JUDY L WARNE, Individually and in her Official capacity as Judge of the 257th District Court, Harris County TX, ALLYSON NASS BRUPBACHER, Individually and in her Official capacity as Amicus for AEW appointed by the 257th District Court, Harris County TX; RONIQUE J BASTINE, Individually and in her Official capacity as an Officer of the Court of the 257th District Court, Harris County TX

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:08-CV-1336

Before REAVLEY, DAVIS, and ELROD, Circuit Judges.
PER CURIAM:*

Jacqueline Du Bois appeals from the district court's dismissal of her complaint raising claims under 42 U.S.C. §§ 1983 and 1985 and the denial of her motion for injunctive relief. Du Bois alleged that in an underlying state family court matter the state judge and two attorneys conspired to conduct, and to deprive her of proper notice of, state court proceedings. The conspiracy allegedly resulted in adverse judicial orders concerning visitation and attorneys fees to be paid by Du Bois to the amicus counsel. We AFFIRM the district court's judgment.

To avoid dismissal for failure to state a claim upon which relief can be granted, a plaintiff must plead "'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp.*, 550 U.S. at 555, 127 S. Ct. at 1965 (quotation marks, citations, and footnote omitted).

Du Bois's [sic] individual capacity claims against Defendant Warne, the state district judge who presided over the disputed

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR R. 47 5.4

proceedings and entered the contested orders, are barred by absolute immunity because Du Bois has alleged no actions by Warne that were nonjudicial in nature. *See Boyd v. Biggers*, 31 F.3d 279, 284–85 (5th Cir. 1994). Immunity applies regardless whether the judge's actions were erroneous, malicious, or in excess of her authority. *Mays v. Sudderth*, 97 F.3d 107, 111 (5th Cir. 1996). A judge's immunity is overcome only for actions not taken in the judge's judicial capacity or for action taken in complete absence of all jurisdiction. *Boyd*, 31 F.3d at 284. Du Bois asserts that Warne lacked all jurisdiction in this case because the state court lacked personal jurisdiction over her because she is a resident of Kansas. This amounts to nothing more than arguing that the judge's actions were improper.

To the extent Du Bois named Warne as a defendant in her official capacity, the claims are barred by the Eleventh Amendment. *See Davis v. Tarrant County, Tex.*, __ F.3d __, 2009 WL 931169, at *11 (5th Cir. Apr. 8, 2009) ("Texas judges are entitled to Eleventh Amendment immunity for claims asserted against them in their official capacities as state actors."). The district court properly dismissed the claims against Warne.

Du Bois argues that Defendant Bastine's motion to dismiss was untimely because it was filed after Bastine filed her answer. This argument is without merit. Bastine sought not only dismissal for failure to state a claim but also, in the alternative, for summary judgment. *See* FED. R. CIV. P. 56; *see also Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999)

(district court may treat an untimely Rule 12(b)(6) motion as a Rule 12(c) motion for judgment on the pleadings based on a failure to state a claim).

Du Bois argues that she has repeatedly stated numerous claims upon which relief may be granted in both her original complaint and in her subsequent pleadings. However, her complaint is premised on the alleged deprivation of rights during the state court proceedings and raises nothing beyond her subjective belief that the defendants sought to violate her rights. Although Du Bois couches her claims in terms of a conspiracy, her conclusory charges are unsupported by specific factual allegations and are insufficient to state a constitutional violation under § 1983. *See Mills v. Criminal District Court No. 3*, 837 F.2d 677, 679 (5th Cir. 1988). Du Bois alleges no factual basis tending to show that Defendants Bastine and Brupbacher conspired with Judge Warne. *See Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986). Similarly, Du Bois alleges no basis for her allegation that she or her son has suffered race based discrimination, and she failed to state an equal protection violation under § 1985. *See Lynch v. Cannatella*, 810 F.2d 1363, 1369–70 (5th Cir. 1987) ("Plaintiffs who assert conspiracy claims under civil rights statutes must plead the *operative facts* upon which their claim is based. Bald allegations that a conspiracy existed are insufficient." (emphasis added)).

Although Du Bois denies that she seeks review of any state court proceedings, her

claims are intertwined with alleged procedural errors in the state court, including alleged lack of personal jurisdiction and insufficient notice, errors which are improperly addressed in a federal district court. *See Hale*, 786 F.2d at 691. The same reasoning applies to her claims for injunctive relief. Although immunity would not bar claims for prospective injunctive relief, Du Bois's claims here are intertwined with and necessarily implicate review of state court orders the propriety of which must be pursued in the state appellate system rather than on federal review. *See id.* The district court properly dismissed Du Bois's complaint.

AFFIRMED.

U.S. COURT OF APPEALS
FILED
JUN 08 2009
CHARLES R. FULBRUGE III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No 08-20682

JACQUELINE C DU BOIS, Individually and for and on behalf of her minor son AEW,

Plaintiff-Appellant

v.

JUDY L WARNE, Individually and in her Official capacity as Judge of the 257th District Court, Harris County TX, ALLYSON NASS BRUPBACHER, Individually and in her Official capacity as Amicus for AEW appointed by the 257th District Court, Harris County TX; RONIQUE J BASTINE, Individually and in her Official capacity as an Officer of the Court of the 257th District Court, Harris County TX

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas, Houston

ORDER:

IT IS ORDERED that Appellant's motion for sanctions against Appellee, Allyson Nass Brupbacher is *denied*.

IT IS FURTHER ORDERED that Appellant's motion for sanctions against Appellee, Ronique J. Bastine is *denied.*

s/Thomas M Reavley
THOMAS M. REAVLEY
UNITED STATES CIRCUIT JUDGE

U.S. COURT OF APPEALS
FILED

JUN 08 2009

CHARLES R. FULBRUGE III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-20682

JACQUELINE C DU BOIS, Individually and for and on behalf of her minor son AEW,

Plaintiff-Appellant

v.

JUDY L WARNE, Individually and in her Official capacity as Judge of the 257th District Court, Harris County TX, ALLYSON NASS BRUPBACHER, Individually and in her Official capacity as Amicus for AEW appointed by the 257th District Court, Harris County TX; RONIQUE J BASTINE, Individually and in her Official capacity as an Officer of the Court of the 257th District Court, Harris County TX

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas, Houston

ORDER:

IT IS ORDERED that Appellant's motion for

sanctions against Appellee, Appellee, Ronique J. Bastine is *denied*.

s/Thomas M Reavley
THOMAS M. REAVLEY
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JACQUELINE C DU BOIS, Individually and for and on behalf of her minor son AEW,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 4:08-CV-01336
JUDY L WARNE, Individually and in her Official capacity as Judge of the 257th District Court, Harris County TX	§	
ALLYSON NASS BRUPBACHER, Individually and in her Official capacity as Amicus for AEW appointed by the 257th District Court, Harris County TX	§	
RONIQUE J BASTINE, Individually and in her Official capacity as an Officer of the Court of the 257th District Court, Harris County TX	§	
Defendants,	§	

ORDER

After considering the parties' filings, all responses and replies thereto, and the applicable law, the Court finds and holds the Plaintiff's Motion for Injunctive relief (Doc. No. 33) is DENIED. Defendant Warne's Motion to Dismiss (Doc No. 6), Defendant Brupbacher's Motion to Dismiss (Doc. No. 8, and Defendant Bastine's Motion to Dismiss and Motion for summary Judgment (Doc. No. 24) are hereby GRANTED. Plaintiff's claims against Defendants are DISMISSED WITH PREJUDICE.

SIGNED at Houston, Texas, on this 2nd day of October, 2008.

s/Keith P. Ellison
KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO ENSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JACQUELINE C DU BOIS, Individually and for and on behalf of her minor son AEW,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 4:08-CV-01336
JUDY L WARNE, Individually and in her Official capacity as Judge of the 257th District Court, Harris County TX	§	
ALLYSON NASS BRUPBACHER, Individually and in her Official capacity as Amicus for AEW appointed by the 257th District Court, Harris County TX	§	
RONIQUE J BASTINE, Individually and in her Official capacity as an Officer of the Court of the 257th District Court, Harris County TX	§	
Defendants,	§	

ORDER

The parties hereby notified that a non-evidentiary hearing is scheduled for October 2,

2008 at 10:30 a.m., at 515 Rusk Street in Chambers, Room 3716, Houston, Texas. Parties may participate by telephone by calling the Court's conference dial-in number (713) 250-5040 at the scheduled time. Those parties who participate by telephone SHOULD NOT USE CELLULAR telephones or a speaker. Parties should be prepared to discuss the Motion [33] for Injunctive Relief and Response [34] to the Motion for Injunctive Relief.

IT IS SO ORDERED.

SIGNED this 23rd day of September, 2008

s/Keith P Ellison
Keith P. Ellison
United States District Judge

1/1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Jacqueline C. Du Bois	§	
vs	§	C.A. NO. H- 08-*1336*
	§	
Judy L Warne et. al.	§	

SCHEDULING/DOCKET CONTROL ORDER

Anticipated Length of Trail. 2 Days

Jury: ✓ Non-Jury. ____

1. NEW PARTIES shall be joined by: *August 4, 2008*
   The Attorney causing the addition of new parties will provide copies of this Order to new parties.

2. EXPERT WITNESS for the PLAINTIFF will be identified by a report listing the qualifications of each expert, each opinion that the expert will present, and the basis for it. DUE DATE: *N/A*

3. EXPERT WITNESS for the DEFENDANT will be identified by a report listing the qualifications of each expert, each opinion that the expert will present, and the basis for it. DUE DATE: *N/A*

4. DISCOVER must be Completed by: *April 1, 2009*
   Written discovery requests are not timely if they are filed so close to this deadline that the recipient would not be required under the Federal Rules of Civil Procedure to respond until after the deadline.

5. DISPOSITIVE AND NON-DISPOSITIVE MOTIONS (except motions *in limine*) will be filed by: *May 4, 2009*

6. JOINT PRETRAIL ORDER and MOTIONS IN LIMINE (The Court will fill in this date) July 27, *2009*

7. TRAIL will begin at 8:30 a.m. *August 3, 2009*

3 July 2008 s/Keith P. Ellison
Date Keith P. Ellison
United States District Judge

07/03/08 s/Jacqueline C Du Bois, M.D.
Date Counsel for Plaintiff(s)

07/03/08 s/ Marc Rietvelt
Date Counsel for Defendant(s)
JUDGE JUDY WARNE

NO. 2002-21145 P-1

WOWCX

12

IN THE INTEREST	§	THE DISTRICT COURT OF
OF A. E. W.	§	HARRIS COUNTY, TEXAS
_____	§	257TH JUDICIAL DISTRICT

ORDER WITHDRAWING CAPIAS

IT IS ORDERED that the "CAPIAS" signed on 1/9, 2008, and which commanded any sheriff, constable or peace officer in the State of Texas to arrest Jacqueline Du Bois and bring that person instanter t the Harris County Jail and then and there to answer to the court for such person's failure to appear at a hearing on a Motion for Contempt, is HEREBY WITHDRAW [sic] and RECALLED.

MAY - 1 2008

SIGNED _____

s/Judy Warne

Presiding Judge DP

F I L E D
Theresa Chang
District Clerk

MAY - 1 2008

Time:_____
Harris County, Texas
By _____
Deputy

Certified Document Number 37515640 - Page 1 of 1

CAUSE NO. 2002-21145 P-1

COSTX

IN THE INTEREST OF	*	THE DISTRICT COURT OF
	*	
A. E. W.	*	HARRIS COUNTY, TEXAS
	*	
A CHILD	*	257TH JUDICIAL DISTRICT

ORDER FOR DEPOSIT ON AMICUS ATTORNEY'S MOTION FOR SECURITY OF COSTS

On this 1st day of May, 2008, the Court considered the Motion for security of Costs of Allyson N. Brupbacher, Amicus Attorney.

IT IS ORDERED that JACQUELINE DUBOIS [sic], Petitioner, pay directly to ALLYSON N. BRUPBACHER, as security of costs of Amicus Attorney, 1250^{00} on or before 6/30/08.

IT IS ORDERED that ARTHUR WILLIAMS, [sic], RESPONDENT, pay directly to ALLYSON N. BRUPBACHER, as security of costs of Amicus Attorney, 1250^{00} on or before 6/30/08. IT IS FURTHER ORDERED that ALLYSON N. BRUPBACHER, Amicus Attorney, may withdraw the sum of 2554^{00} from her trust account.

MAY - 1 2008

SIGNED on _____, 2008.

s/Judy Warne
JUDGE PRESIDING DP

Certified Document Number 37593634 - Page 1 of 1

F I L E D
Theresa Chang
District Clerk

MAY - 1 2008
Time:_____
Harris County, Texas
By _____
Deputy

M:D:\WILLIAMS\Motion for Costs
4/21/2008

CAUSE NO. 2002-21145 *P-1*

COSTX

IN THE INTEREST OF	§	THE DISTRICT COURT OF
	§	
A. E. W.	§	HARRIS COUNTY, TEXAS
	§	
A CHILD	§	257TH JUDICIAL DISTRICT

F I LED
THERESA CHANG
DISTRICT CLERK
HARRIS COUNTY, TEXAS

2008 MAY - 1 PM 12:40

By _____
FAMILY INTAKE

REQUEST FOR JURY TRIAL

Jacqueline Dubois [sic] request a jury trial and pays the jury fee of $30.00.

Respectfully submitted,

Thompson & de Leef
515 Richmond
Houston, Texas 77006
Tel: (713) 668-5700
Fax: (713) 521-1845

By: s/Sara Bloome
Sara Bloome
State Bar No. 24006972
Attorney for Applicant

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure ~~April 30~~, 2008.
May 1

s/Sara Bloome
Sara Bloome
Attorney for Applicant

CAUSE NO. 2002-21145 P-1
F I L E D ATFEX
Theresa Chang SANCX
District Clerk

APR 17 2008
Time:_____
Harris County, Texas
By _____
Deputy

IN THE INTEREST OF	*	THE DISTRICT COURT OF
	*	
A. E. W.	*	HARRIS COUNTY, TEXAS
	*	
A CHILD	*	257TH JUDICIAL DISTRICT

ORDER GRANTING MOTION TO SHOW CAUSE AND GRANTING SANCTIONS

On this date appeared Allyson N. Brupbacher, on the Motion to show Cause and for Sanctions filed in this case by Amicus Attorney.

After considering the evidence and argument of counsel, it is the opinion of this Court that the motion should be granted.

IT IS ORDERED that JACQUELINE DUBOIS [sic] is obligated and , subject to wage withholding, shall pay to ALLYSON N. BRUPBACHER, reasonable and necessary Amicus Attorney fees incurred herein in the sum of $1,750.00 IT IS ORDERED that said $1,750 shall

be payable as follows: ~~a payment of $5~~ REDACTION ~~due on May 1, 2008~~, a payment of $ REDACTION 1,000.00 DUE AND PAYABLE ON May 15, 2008 and a payment of $ REDACTION 750.00 due and payable on June *15* 2008 ~~and a payment of $250.00 due and payable on June 15, 2008~~. IT IS ORDERED that all payments shall be made to ALLYSON N. BRUPBACHER at 22136 Westheimer Pkwy., Suite 201, Katy, Texas 77450.

IT IS ORDERED that ALLYSON N. BRUPBACHER be and is hereby awarded a judgment in the form of child support against JACQUELINE DUBOIS [sic] for the reasonable and necessary Amicus Attorney's fees incurred herein in the amount of $1,750.00 said judgment to bear interest at the maximum legal rate per annum pursuant to the Texas Family Code, beginning on the date on which this Order is signed by the Honorable Judge of this Court, for which let execution issue. This judgment is final and appealable.

It is ordered that Jacqueline Dubois [sic] *provide to Allyson Brupbacher with her current Human Resource and/or payroll department address by 5 p.m. on April 17, 2008.*

SIGNED on *April 17*, 2008.

s/Judy Warne *DP*
JUDGE PRESIDING

s/Sara Bloome
atty for Jacqueline Dubois [sic]
SB # 24006972

s/Allyson Brupbacher
Allyson Brupbacher
90001746

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

Certified Document Number 37362934 - Page 1 of 1

CAUSE NO. *2002-21145* *12* MICAX

Arthur Williams	)	IN THE 257TH JUDICIAL DISTRICT COURT OF
	)	
VS.	)	F I L E D Theresa Chang District Clerk
Jacqueline Dubois [sic]	)	HARRIS COUNTY, TEXAS

JAN - 9 2008
Time:
Harris County, Texas
By _____
Deputy

ORDER FOR CAPIAS FOR ARREST OF RESPONDENT

On this the *9th* day of *January*, 2008, upon the court's [sic] call of the Motion to hold in contempt the RESPONDENT, *Jacqueline Dubois* [sic], pursuant to the affidavit of COMPLAINT [sic], *Arthur Williams*, alleging that RESPONDENT willfully and intentionally has disobeyed an order of this court relating to: ☐ payment of child support/ ☐ payment of spousal support/ ☐ delivery or use of specific property/ ☑ (other) *Possession and access of a child* and it appearing that said RESPONDENT, although duly served with notice of and an order to appear at a time and place certain, and then and there to show cause why RESPONDENT should not be held in

contempt of court, wholly FAILED TO APPEAR.

THEREFORE, IT IS ORDERED that the Clerk of this Court issue a CAPIAS FOR THE ARREST OF THE RESPONDENT, directed to any peace Officer of the State of Texas *or any State where she may be found* commanding him to arrest and take into custody the body of the RESPONDENT, *Jacqueline Dubois* [sic], and ~~him~~ her safely keep, notify the Court immediately of his [sic] arrest and bring ~~him~~ her before this Court INSTANTER, Or if this Court is not in session, then ~~him~~ her safely keep and have him before this Court on or before the first working day of this Court after the arrest of the RESPONDENT. *If the Respondent make bond, the hearing on this matter has been set on the 14th day of February 2008 at 9:00 a.m.*

IT IS ORDERED that the RESPONDENT be released upon the posing of an appearance bond or security in the amount of $*N/A*, or a cash bond in the amount of $*1500.00*.

IT IS ORDERED that if the RESPONDENT is at taken into custody and released on bond, the bond shall be conditioned o the RESPONDENT'S promise to appear in this Court for a hearing as required by this Court without the necessity of further personal service of notice to the RESPONDENT. *on February 14, 2008 at 9:00 am*

In conformance with Section 157.102. Texas Family Code, the Capias shall be treated by law enforcement officials in the same manner as an arrest warrant for a criminal

offense, and shall enter the Capias in the computer records for outstanding warrants maintained by the local police, sheriff and Department of Public Safety.

JAN - 9 2008

SIGNED and ENTERED this _____, day of _____, 20_____.

s/Judy Warne
JUDGE PRESIDING

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

Certified Document Number 35297430 - Page 1 of 2

DESCRIPTOR INFORMATION FORM ON RESPONDENT

CAUSE NO. 2002-21145 IN THE 25TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS

STYLE: In the Interest of A. E. W

THIS FORM IS TO BE COMPLETED BY THE PARTY REQUESTING ISSUANCE OF A CAPIAS UNDER SECTION 157.102 OF THE TEXAS FAMILY CODE

FULL NAME OF THE RESPONDENT. JACQUELINE C. DU BOIS

ADDRESS OF RESPONDENT: 1322 Elm Creek Dr., Junction City, Kansas, 66441
Geary Community Hospital, 1106 St. Mary's Rd. Junction City, KS

RESPONDENT'S DATE OF BIRTH: Unknown

IF BIRTHDATE UNKNOWN, APPROXIMATE AGE OF RESPONDENT: 40

RESPONDENT'S SOCIAL SECURITY NO: 430-XX-XXXX

RESPONDENT'S DRIVER'S LICENSE NO: 03160016

RESPONDENT'S RACE: African American SEX: F

HEIGHT: 5'2" WEIGHT: 120

ALIAS NAMES, if any: none

OTHER IDENTIFYING MARKS: fair skinned, wavy hair, petite

Revised 5/20/97

CAUSE NO. 200221145

RECEIPT NO. 345681 0.00 CIV
12-27-2007 TR # 81770566

PLAINTIFF: DUBOIS, JACQUELINE C
vs.
DEFENDANT: WILLIAMS, ARTHUR

In the 257th
Judicial District Court
of Harris County, Texas
257TH DISTRICT COURT
Houston, TX

PRECEPT (NON-RESIDENT)

THE STATE OF TEXAS
County of Harris

TO ANY SHERIFF OR CONSTABLE OF TEXAS
Or Other authorized Person

YOU ARE HERBY COMMANDED to serve,
DUBOIS, JACQUELINE C
1322 ELM CREEK DRIVE JUNCTION CITY KS
66441

With the accompanying certified copy of
ORDER SETTING HEARING and copy of PETITION
FOR WRIT OF HABEAS CORPUS AND
ENFORCEMENT OF POSSESSION ORDER AND OR
ACCESS AND ORDER TO APPEAR

HEREIN FAIL NOT, but of this notice make due return as the law directs.

ISSUED AND GIVEN UNDER [ILLEGIBLE] THE SEAL OF SAID [ILLEGIBLE] at Houston, Texas this 3rd day of January, 2008.

COUNTY OF HARRIS STATE OF TEXAS

Issued at the request of:
BASTINE, RONIQUE J.
12603 SOUTHWEST FWY. - ST [ILLEGIBLE]
STAFFORD, TX 77477
Tel: (281) 240-7979
Bar No.: 1895365

s/*Theresa Chang*

THERESA CHANG, District Clerk
Harris County, Texas
201 Caroline Houston, Texas 77002
(P.O. Box 4651, Houston, Texas)

GENERATED BY: RICHARDSON, DENIS E
IQT/UIM/8035921

OFFICER/AUTHORIZED PERSON RETURN

County of_____

PERSONALLY APPEARED before me the undersigned authority. _____
Who being by me duly sworn, deposes and says that in the County of _____
State of _____ he delivered to the within named defendants in person at the following times and places to wit:

NAME	DATE		TIME		PLACE
	MONTH	DAY	HOUR	MIN	

a true copy of this notice with a copy of :

Accompanying same; and further that he is an adult and in in no manner interested in this suit and is the person competent to make oath of the fact.

_____
Affiant/Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed b him/her I the exact manner recited o the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, _____.

_____
Notary Public

[illegible]

RUSH

TR#81770564 CIV 345680 $00 [4A

Case No. 2003-21145A

In the District Court of Harris County

257TH Judicial District Of Texas

IN THE INTEREST OF

A. E. W.

MINOR CHILD(REN)

WRIT OF
} HABEAS CORPUS

JACQUELINE C. DUBOIS [sic]

1322 ELM CREEK DRIVE

JUNCTION CITY, KANSAS 66441

Issued 31ST day of DECEMBER, 2007

THERESA CHANG,

District Clerk Harris County Texas

By s/Martha Moya
MARTHA MOYA Deputy District Clerk

Atty: RONIQUE J. BASTINE
12603 SW FRWY #571
STAFFORD, TX 77477

Bar# 01895365

OFFICER'S RETURN

Came to hand n the ____ day of _____ A.D. 20___, at _____ o'clock____.M. and executed on the _____ day of _____ A.D., by delivering to the within _____ named person a true copy of this writ.

FEES: $_____

_____

Sheriff

_____ County, Texas

By _____ Deputy

[illegible]

WRIT OF HABEAS CORPUS

THE STATE OF TEXAS

TO: ANY SHERIFF OR CONSTABLE

WITHIN THE STATE OF TEXAS

GREETING

YOUR ARE HEREBY COMMANDED that you serve JACQUELINE C. DUBOIS [sic], with this Writ of Habeas Corpus, filed in the 257TH Judicial District Court in and for Harris County, Texas on the 27TH day of DECEMBER, 2007 A.D. Cause No. 2002-21145A styled Ex Parte A. E. W., MINOR CHILD(REN), wherein THE HONORABLE LINDA MOTHERAL, Judge of the 257TH Judicial District Court, entered the following Order, to -wit:

[illegible] HABEAS DOC

NOW, THEREFORE, YOU JACQUELINE C. DUBOIS, ARE HEREBY COMMANDED to produce and have the person(s) of A. E. W. MINOR CHILD(REN), before the 257TH Judicial District Court 6TH Floor, Family law Center, 1115 Congress, Houston, Texas 77002, on the 9TH day of January, 2007 [sic] at 9:00 AM to show cause why the child(ren) should not be returned to Applicant, in accordance with the certified copy of the Order of the Court hereto attached.

HEREIN FAIL NOT, but due return make of this Writ showing how you have executed the same.

GIVEN UNDER MY HAND and seal of said Court, at office in Houston, Texas this 31st day of DECEMBER, 2007,. AD

THERESA CHANG
DISTRICT CLERK
Harris County, Texas

District Court of Harris County Texas
By s/Martha Moya
MARTHA MOYA

[ILLEGIBLE] HABEAS DOC

CAUSE NO. 2002-21145

11 P-1
COSTX

IN THE INTEREST OF	*	THE DISTRICT COURT OF
	*	
A. E. W.	*	HARRIS COUNTY, TEXAS
	*	
A CHILD	*	257TH JUDICIAL DISTRICT

ORDER FOR DEPOSIT ON AMICUS ATTORNEY'S MOTION FOR SECURITY COSTS

On this 12th day of December, 2007, the Court considered the Motion for Security of costs of ALLYSON N. BRUPBACHER, Amicus Attorney.

IT IS ORDERED that JACQUELINE DUBOIS [sic], Petitioner, pay directly to ALLYSON N. BRUPBACHER, as security of cost of Amicus Attorney, $1,500.00 on or before Jan 15, 2008.

IT IS ORDERED that ARTHUR WILLIAMS, Respondent, pay directly to ALLYSON N. BRUPBACHER, as security of cost of Amicus Attorney, $3,000.00 on or before Jan 15, 2008.

IT IS FURTHER ORDERED that ALLYSON N. BRUPBACHER, Amicus Attorney, may withdraw the sum of $4,266.50 from her trust account.

SIGNED on December 12, 2007.

s/Judy Warne
JUDGE PRESIDING

F I L E D
Theresa Chang
District Clerk

DEC 12 2007

Time:_____
Harris County, Texas
By _____
Deputy

MD:\WILLIAMS\Motion for Costs
12/11/2007

Certified Document Number 34840842 - Page 1 of 1

U.S. COURT OF APPEALS
F I L E D

JUL 07 2009

CHARLES R. FULBRUGE III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 08-20682

JACQUELINE C DU BOIS, Individually and for and on behalf of her minor son AEW,

Plaintiff-Appellant

v.

JUDY L WARNE, Individually and in her Official capacity as Judge of the 257th District Court, Harris County TX, ALLYSON NASS BRUPBACHER, Individually and in her Official capacity as Amicus for AEW appointed by the 257th District Court, Harris County TX; RONIQUE J BASTINE, Individually and in her Official capacity as an Officer of the Court of the 257th District Court, Harris County TX

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas, Houston

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion June 6, 2009,
5 Cir., _____, _____, F.3d _____)

Before REAVLEY, DAVIS AND ELROD, Circuit Judges.

PER CURIAM;

(X) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc. (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35)

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is

DENIED.

ENTERED FOR THE COURT:

s/Thomas M Reavley
United States Circuit Judge

EB-REHG-4A

Constitution of the United States

Article III - The Judicial Branch

Section 2 - Trial by Jury, Original Jurisdiction, Jury Trials

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Above portion of Section 2 modified by the 11th Amendment.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial

shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Article IV - The States

Section 1 - Each State to Honor all others
Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2 - State citizens, Extradition
The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Amendment 7 - Trial by Jury in Civil Cases.
In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 11 - Judicial Limits.
The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment 14 - Citizenship Rights.
1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PART VII. PRACTICE AND PROCEDURE

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

2. A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

PART VII. PRACTICE AND PROCEDURE

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

4.

(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

Rule 12

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed — but early enough not to delay trial — a party may move for judgment on the pleadings.

UNITED STATES CODE

CITE: 28 U.S.C. 1254(1)

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 81--SUPREME COURT

Sec. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

CITE: 28 U.S.C. 1331

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 85--DISTRICT COURTS; JURISDICTION

Sec. 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(June 25, 1948, ch. 646, 62 Stat. 930; Pub. L. 85-554, Sec. 1, July 25, 1958, 72 Stat. 415; Pub. L. 94-574, Sec. 2, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 96-486, Sec. 2(a), Dec. 1, 1980, 94 Stat. 2369.)

CITE: 28 U.S.C. 1332(a)(1)

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 85--DISTRICT COURTS; JURISDICTION

Sec. 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--

(1) citizens of different States

CITE: 28 U.S.C. 1343(a)(1-4)

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 85--DISTRICT COURTS; JURISDICTION

Sec. 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

CITE: 42 U.S.C. 1983

TITLE 42--THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER I--GENERALLY

Sec. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. Sec. 1979; Pub. L. 96-170, Sec. 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, Sec. 309(c), Oct. 19, 1996, 110 Stat. 3853.)

TITLE 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 21--CIVIL RIGHTS

SUBCHAPTER I—GENERALLY

Sec. 1985. Conspiracy to interfere with civil rights

(2) Obstructing justice; intimidating party, witness, or juror If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

CITE: 28 U.S.C. 2403(b)

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART VI--PARTICULAR PROCEEDINGS

CHAPTER 161--UNITED STATES AS PARTY GENERALLY

Sec. 2403. Intervention by United States or a State; constitutional question

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

PART II - RULES OF PRACTICE IN DISTRICT AND COUNTY COURTS

Section 1 - General Rules

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefore, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea,

motion or application.
After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

RULE 21a. METHODS OF SERVICE

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or by

telephonic document transfer, three days shall be added to the prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 105. SETTINGS, HEARINGS, AND ORDERS

Sec. 105.001. TEMPORARY ORDERS BEFORE FINAL ORDER.

(e) Temporary orders rendered under this section are not subject to interlocutory appeal.

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 107. SPECIAL APPOINTMENTS AND SOCIAL STUDIES

SUBCHAPTER A. COURT-ORDERED REPRESENTATION IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

Sec. 107.001. DEFINITIONS. In this chapter:
(1) "Amicus attorney" means an attorney appointed by the court in a suit, other than a suit filed by a governmental entity, whose role is to provide legal services necessary to assist the court in protecting a child's best interests rather than to provide legal services to the child.
(2) "Attorney ad litem" means an attorney who provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation.
(3) "Developmentally appropriate" means structured to account for a child's age, level of education, cultural background, and degree of language acquisition.
(4) "Dual role" means the role of an attorney who is appointed under Section 107.0125 to act

as both guardian ad litem and attorney ad litem for a child in a suit filed by a governmental entity.
(5) "Guardian ad litem" means a person appointed to represent the best interests of a child. The term includes:
(A) a volunteer advocate appointed under Subchapter C;
(B) a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;
(C) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or
(D) an attorney ad litem appointed to serve in the dual role.
Amended by Acts 1995, 74th Leg., ch. 751, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.002. POWERS AND DUTIES OF GUARDIAN AD LITEM FOR CHILD. (a) A guardian ad litem appointed for a child under this chapter is not a party to the suit but may:
(1) conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best interests of the child; and
(2) obtain and review copies of the child's relevant medical, psychological, and school records as provided by Section 107.006.
(b) A guardian ad litem appointed for the child

under this chapter shall:
(1) within a reasonable time after the appointment, interview:
(A) the child in a developmentally appropriate manner, if the child is four years of age or older;
(B) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and
(C) the parties to the suit;
(2) seek to elicit in a developmentally appropriate manner the child's expressed objectives;
(3) consider the child's expressed objectives without being bound by those objectives;
(4) encourage settlement and the use of alternative forms of dispute resolution; and
(5) perform any specific task directed by the court.
(c) A guardian ad litem appointed for the child under this chapter is entitled to:
(1) receive a copy of each pleading or other paper filed with the court in the case in which the guardian ad litem is appointed;
(2) receive notice of each hearing in the case;
(3) participate in case staffings by an authorized agency concerning the child;
(4) attend all legal proceedings in the case but may not call or question a witness or otherwise provide legal services unless the guardian ad litem is a licensed attorney who has been appointed in the dual role;
(5) review and sign, or decline to sign, an agreed order affecting the child; and
(6) explain the basis for the guardian ad litem's opposition to the agreed order if the guardian

ad litem does not agree to the terms of a proposed order.
(d) The court may compel the guardian ad litem to attend a trial or hearing and to testify as necessary for the proper disposition of the suit.
(e) Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify regarding, and is permitted to submit a report regarding, the guardian ad litem's recommendations relating to:
(1) the best interests of the child; and
(2) the bases for the guardian ad litem's recommendations.
(f) In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian's report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative.
(g) In a contested case, the guardian ad litem shall provide copies of the guardian ad litem's report, if any, to the attorneys for the parties as directed by the court, but not later than the earlier of:
(1) the date required by the scheduling order; or
(2) the 10th day before the date of the commencement of the trial.
(h) Disclosure to the jury of the contents of a

guardian ad litem's report to the court is subject to the Texas Rules of Evidence.
Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 943, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1294, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 1, eff. September 1, 2005.

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD AND AMICUS ATTORNEY. An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:
(1) shall:
(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:
(i) the child in a developmentally appropriate manner, if the child is four years of age or older;
(ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and
(iii) the parties to the suit;
(B) seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;
(C) consider the impact on the child in formulating the attorney's presentation of the

child's expressed objectives of representation to the court;
(D) investigate the facts of the case to the extent the attorney considers appropriate;
(E) obtain and review copies of relevant records relating to the child as provided by Section 107.006;
(F) participate in the conduct of the litigation to the same extent as an attorney for a party;
(G) take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings;
(H) encourage settlement and the use of alternative forms of dispute resolution; and
(I) review and sign, or decline to sign, a proposed or agreed order affecting the child;
(2) must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and
(3) is entitled to:
(A) request clarification from the court if the role of the attorney is ambiguous;
(B) request a hearing or trial on the merits;
(C) consent or refuse to consent to an interview of the child by another attorney;
(D) receive a copy of each pleading or other paper filed with the court;
(E) receive notice of each hearing in the suit;
(F) participate in any case staffing concerning the child conducted by an authorized agency; and
(G) attend all legal proceedings in the suit.
Added by Acts 1997, 75th Leg., ch. 1294, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 172, Sec. 2, eff. September 1, 2005.

Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR CHILD. (a) Except as otherwise provided by this chapter, the attorney ad litem appointed for a child shall, in a developmentally appropriate manner:
(1) advise the child;
(2) represent the child's expressed objectives of representation and follow the child's expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem; and
(3) as appropriate, considering the nature of the appointment, become familiar with the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases, the suggested amendments to those standards adopted by the National Association of Counsel for Children, and the American Bar Association's standards of practice for attorneys who represent children in custody cases.
(b) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall complete at least three hours of continuing legal education relating to child advocacy as described by Subsection (c) as soon as practicable after the attorney ad litem's appointment. An attorney ad litem is not

required to comply with this subsection if the court finds that the attorney ad litem has experience equivalent to the required education.

(c) The continuing legal education required by Subsection (b) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 or 263.

(d) Except as provided by Subsection (e), an attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall meet before each court hearing with:

(1) the child, if the child is at least four years of age; or

(2) the individual with whom the child ordinarily resides, including the child's parent, conservator, guardian, caretaker, or custodian, if the child is younger than four years of age.

(e) An attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 is not required to comply with Subsection (d) before a hearing if the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance with that subsection is not feasible or in the best interest of the child. Additionally, a court may, on a showing of good cause, authorize an attorney ad litem to comply with Subsection (d) by conferring with the child or other individual, as appropriate, by telephone or video conference.

Added by Acts 2003, 78th Leg., ch. 262, Sec. 1,

eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 3, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 268, Sec. 1.04(a), eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 310, Sec. 1, eff. June 15, 2007.

Sec. 107.0045. DISCIPLINE OF ATTORNEY AD LITEM. An attorney ad litem who fails to perform the duties required by Sections 107.003 and 107.004 is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.
Added by Acts 2005, 79th Leg., Ch. 268, Sec. 1.05, eff. September 1, 2005.

Sec. 107.005. ADDITIONAL DUTIES OF AMICUS ATTORNEY. (a) Subject to any specific limitation in the order of appointment, an amicus attorney shall advocate the best interests of the child after reviewing the facts and circumstances of the case. Notwithstanding Subsection (b), in determining the best interests of the child, an amicus attorney is not bound by the child's expressed objectives of representation.
(b) An amicus attorney shall, in a developmentally appropriate manner:
(1) with the consent of the child, ensure that the child's expressed objectives of representation are made known to the court;

(2) explain the role of the amicus attorney to the child;
(3) inform the child that the amicus attorney may use information that the child provides in providing assistance to the court; and
(4) become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases.
(c) An amicus attorney may not disclose confidential communications between the amicus attorney and the child unless the amicus attorney determines that disclosure is necessary to assist the court regarding the best interests of the child.
Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 4, eff. September 1, 2005.

Sec. 107.006. ACCESS TO CHILD AND INFORMATION RELATING TO CHILD. (a) Except as provided by Subsection (c), in conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to the child and any information relating to the child.
(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social

services, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).
(c) A medical, mental health, or drug or alcohol treatment record of a child that is privileged or confidential under other law may be released to a person appointed under Subsection (a) only in accordance with the other law.
Added by Acts 1995, 74th Leg., ch. 943, Sec. 11, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1294, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 5, eff. September 1, 2005.

Sec. 107.007. ATTORNEY WORK PRODUCT AND TESTIMONY. (a) An attorney ad litem, an attorney serving in the dual role, or an amicus attorney may not:
(1) be compelled to produce attorney work product developed during the appointment as an attorney;
(2) be required to disclose the source of any information;
(3) submit a report into evidence; or
(4) testify in court except as authorized by Rule 3.08, Texas Disciplinary Rules of Professional Conduct.

(b) Subsection (a) does not apply to the duty of an attorney to report child abuse or neglect under Section 261.101.
Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.009. IMMUNITY. (a) A guardian ad litem, an attorney ad litem, or an amicus attorney appointed under this chapter is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in the capacity of guardian ad litem, attorney ad litem, or amicus attorney.
(b) Subsection (a) does not apply to an action taken, a recommendation made, or an opinion given:
(1) with conscious indifference or reckless disregard to the safety of another;
(2) in bad faith or with malice; or
(3) that is grossly negligent or wilfully wrongful.
Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 7, eff. September 1, 2005.

SUBCHAPTER B. APPOINTMENTS IN CERTAIN SUITS

Sec. 107.017. APPOINTMENT OF AMICUS ATTORNEY PROHIBITED. The court may not appoint a person to serve as an amicus

attorney in a suit filed by a governmental entity under this chapter.
Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.021. DISCRETIONARY APPOINTMENTS.
(a) In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint one of the following:
(1) an amicus attorney;
(2) an attorney ad litem; or
(3) a guardian ad litem.
(a-1) In a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, the court shall, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests, appoint one of the following:
(1) an amicus attorney; or
(2) an attorney ad litem.
(b) In determining whether to make an appointment under this section, the court:
(1) shall:
(A) give due consideration to the ability of the parties to pay reasonable fees to the appointee; and
(B) balance the child's interests against the cost to the parties that would result from an appointment by taking into consideration the cost of available alternatives for resolving issues

without making an appointment;
(2) may make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child, unless the appointment is otherwise required by this code; and
(3) may not require a person appointed under this section to serve without reasonable compensation for the services rendered by the person.
Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 8, eff. September 1, 2005.

Sec. 107.022. CERTAIN PROHIBITED APPOINTMENTS. In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may not appoint:
(1) an attorney to serve in the dual role; or
(2) a volunteer advocate to serve as guardian ad litem for a child unless the training of the volunteer advocate is designed for participation in suits other than suits filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child.
Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 9, eff.

September 1, 2005.

Sec. 107.023. FEES IN SUITS OTHER THAN SUITS BY GOVERNMENTAL ENTITY. (a) In a suit other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, in addition to the attorney's fees that may be awarded under Chapter 106, the following persons are entitled to reasonable fees and expenses in an amount set by the court and ordered to be paid by one or more parties to the suit:
(1) an attorney appointed as an amicus attorney or as an attorney ad litem for the child; and
(2) a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child, other than a volunteer advocate.
(b) The court shall:
(1) determine the fees and expenses of an amicus attorney, an attorney ad litem, or a guardian ad litem by reference to the reasonable and customary fees for similar services in the county of jurisdiction;
(2) order a reasonable cost deposit to be made at the time the court makes the appointment; and
(3) before the final hearing, order an additional amount to be paid to the credit of a trust account for the use and benefit of the amicus attorney, attorney ad litem, or guardian ad litem.

(c) A court may not award costs, fees, or expenses to an amicus attorney, attorney ad litem, or guardian ad litem against the state, a state agency, or a political subdivision of the state under this part.
(d) The court may determine that fees awarded under this subchapter to an amicus attorney, an attorney ad litem for the child, or a guardian ad litem for the child are necessaries for the benefit of the child.
Added by Acts 2003, 78th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 172, Sec. 10, eff. September 1, 2005.

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE A.
GENERAL PROVISIONS

CHAPTER 109. APPEALS

Sec. 109.001. TEMPORARY ORDERS DURING PENDENCY OF APPEAL.

(c) A temporary order rendered under this section is not subject to interlocutory appeal.

FAMILY CODE

TITLE 5 THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 157. ENFORCEMENT

SUBCHAPTER A. PLEADINGS AND DEFENSES

SUBCHAPTER B PROCEDURE

Sec. 157.061. SETTING HEARING.

(a) On filing a motion for enforcement requesting contempt, the court shall set the date, time, and place of the hearing and order the respondent to personally appear and respond to the motion.

(b) If the motion for enforcement does not request contempt, the court shall set the motion for hearing on the request of a party.

Sec. 157.062. NOTICE OF HEARING.

(a) The notice of hearing must include the date, time, and place of the hearing.

(b) The notice of hearing need not repeat the allegations contained in the motion for enforcement.

(c) Notice of hearing on a motion for enforcement of an existing order providing for child support or possession of or access to a child shall be given to the respondent by personal service of a copy of the motion and notice not later than the 10th day before the date of the hearing.

(d) If a motion for enforcement is joined with another claim:

(1) the hearing may not be held before 10 a.m. on the first Monday after the 20th day after the date of service; and

(2) the provisions of the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply.

FILED
THERESA CHANG
DISTRICT CLERK
HARRIS COUNTY, TEXAS

2007 DEC - 11

By_____
FAMILY INTAKE

NO. 2002-21145

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
A. E. W.	§	257TH JUDICIAL DISTRICT
	§	
A CHILD	§	HARRIS COUNTY, TEXAS

PLEA OF INSUFFICIENT SERVICE OF PROCESS

TO THE HONORABLE COURT:

Pursuant to the Texas Rules of Civil Procedure (TRCP), I, Jacqueline C. Du Bois, was not properly noticed on any pending settings, specifically proceedings scheduled for Wednesday, 12 December 2007. I have not previously waived service of process, and I do not currently waive my right to service of process.

I.

To my knowledge, whatever plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request was not presented during a hearing at which I was present or represented. If documents were filed with the clerk of the court in writing, a true copy was not served on me at the same time. This is a direct violation of TRCP, Part II, Rule 21.

II.

While Ms. Brupbacher's e-mail informing me of the two hearing is appreciated, it is contrary to the methods of service promulgated in TRCP, Part II, Rule 21a. In relevant part, it states that every notice required by TRCP and every plea, motion, or other form of request required to be served under Rule 21 except as expressly noted, may be served by delivering a copy to the party to be served either in person, by agent , by courier receipted delivery, or by certified or registered U.S. mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the court in its discretion may direct. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. I hereby attest I received no such notice or instrument by any of the prescribed means.

III.

This is not the first time Arthur Williams and or his

attorney of record have failed to follow TRCP directives regarding service. In a sincere desire to avoid future incidents, I humbly beseech the Court under authority of TRCP, Rule 21b to impose an appropriate sanction or sanctions available under Rule 215-2b on Mr. Williams and or his attorney for failure to serve on or deliver to me a plea, motion, or other application to the court for an order in accordance with Rules 21 and 21a.

Respectfully submitted,

By: s/*Jacqueline C. Du Bois*
Jacqueline C. Du Bois
1322 Elm Creek Drive
Junction City, KS 66441
Tel: (281) 889-2511
Fax: (785) 238-8142
Pro se

STATE OF KANSAS

COUNTY OF *Geary*

Before me, the undersigned Notary Public, on this day personally appeared Jacqueline Du Bois, who upon oath, stated she is making this plea and the information provided is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME ON
Dec 8, 2007

s/Nancy A. Kozlowsk
NOTARY PUBLIC, State of Kansas

CERTIFICATE OF SERVICE

I certify that a copy of the *PLEA OF INSUFFICIENT SERVICE OF PROCESS* was served upon Ronique J. Bastine, attorney for Arthur Williams, at 12603 Southwest Freeway, Suite 571, Stafford, TX 77477 and Allyson N. Brupbacher, amicus attorney for A. E. W., at 22136 Westheimer Pkwy, Suite 201, Katy, TX 77450 on December 10, 2007, by certified mail, return receipt, pursuant to TRCP 21a.

s/ J C Du Bois
Jacqueline C. Du Bois

NO. 2002-21145

REDACTIONS

FILED
CHARLES B. BACARISSE
District Clerk

SEP 07 2007

Harris County, Texas

By 9-7-07
Deputy

P-1
Amgas
("C")
(07)
22-

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

IN THE INTEREST OF
A. E. W.
MINOR CHILDREN [sic]

257TH JUDICIAL DISTRICT

ORDER APPOINTING AMICUS ATTORNEY

The Court herby finds that under Section 107.021 of the Texas Family Code (or its successors) an Amicus Attorney should be appointed to represent the interest of the minor child(ren). The Court herby appoints Allyson Brupbacher #90001746 as Amicus attorney for the child(ren) the subject of this suit.

The Court herby finds that the amicus attorney is entitled to reasonable fee and

expense to be paid by the parties. The Court hereby ORDERS each party to deposit the sum of $1500.00 with the Amicus Attorney's Trust Account no later than 5:00 p.m., seven (7) days following the signing of this Order. The Court reserves the right to order additional cost deposits prior to trial.

The Court hereby ORDERS that the Amicus Attorney shall have immediate access to all records relating to the child(ren) not otherwise privileged, confidential, or otherwise protected by other rules of law, including records regarding social services, or medical or mental health evaluation or treatment of the child(ren), law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child(ren) is/are a beneficiary, shall provide immediate access of the records to the Amicus attorney without requiring a further order or release, and that any custodian of the child(ren) grant the Amicus Attorney immediate access to the child(ren).

The Amicus Attorney appointed herein has all of the rights and privileges as contain in Section 107 of the Texas Family Code, with the following limitations:

(a) the Amicus Attorney shall only be required to attend court hearing where his or her presence is necessary to protect the best interest of the child(ren);

(b) additional limitations, (if any) _____

2007.

SIGNED on September 07, ~~2003.~~

s/Judy Warne DOF
JUDGE PRESIDING

~~APPROVED AS TO FORM BY:~~

~~Attorney for Petitioner~~
~~Tel No.:~~

~~APPROVED AS TO FORM BY:~~

~~Attorney for Respondent~~
~~Tel No.:~~

Certified Document Number 32864522 - Page 1 of 1

RECORDER'S MEMORANDUM
This instrument is of poor quality at the time of imaging

Democratic sweep ushers change to Houston's 312th Family Court

Posted on November 6, 2008 by Shannon Cavers

On November 4, 2008, Democrats won 23 of 27 trial judge positions on the ballot. Though the majority of changes affect the civil and criminal courthouses, the 312th Family District Court will have a new Presiding Judge in January 2009.

Judge David Farr was appointed to the 312th in 2007 after having served as a Family Associate Judge under Judge Judy Warne for many years. Judge Farr has been an asset to the family law center, and his leadership will be missed. . .

http://divorce.caverslaw.com/2008/11/articles/family-law-basics-1/democratic-sweep-ushers-change-to-houstons-312th-family-court/

THE STATE OF TEXAS
JUDY WARNE, JUDGE
257TH JUDICIAL DISTRICT COURT
FAMILY LAW CENTER 6TH
1115 CONGRESS
HOUSTON, TEXAS 77002
(713) 755-6950

May 6, 2008

The Honorable Judge Doug Warne
Administrative Judge
Harris County Family Courts
1115 Congress, 7th Floor/311th Court
Houston, Texas 77002

Re: Cause number 2002-21145;
Jacqueline Dubois [sic] and Arthur Williams

Dear Judge Warne:

This letter is my voluntary recusal in the referenced case number. Please process the reassignment as expeditiously as possible.

Very truly yours,
s/Judy Warne
Judy Warne

Allyson N. Brupbacher, P.C. Attorney & Counselor at Law
22136 Westheimer Pkwy., Suite 201,
Katy, Texas 77450
Telephone: (281) 398-0505
Facsimile: (281) 398-2747
Email: allybrupbacher@ev1.net

Board Certified- Family Law
Texas Board of Legal Specialization

TRANSMITTAL SHEET

TO: Ronique Bastine TO: Sara Bloome

FAX NUMBER: (281) 778-5537 FAX NUMBER: (713) 521-1845

Date: January 25, 2008

CLIENT: Williams

WE ARE TRANSMITTING 1 PAGE(S), INCLUDING THIS COVER SHEET, IF THE TRANSMISSION IS INCOMPLETE, PLEASE CONTACT US AT (281) 398-0505.

REMARKS: ☐ URGENT ☐ FOR YOUR INFORMATION
☐ AS REQUESTED ☐ PLEASE REVIEW AND RESPOND

Counselors:
Please be advised that on December 12, 2007, the parties were ordered to pay me a total of $3,000.00 each on or before January 15, 2008.

To date, both parties have only paid me $1500.00 each. If this is not remedied by February 1, I will assume I must file a motion with the court.

Allyson N. Brupbacher

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy I error, please immediately notify us by telephone and return the original message to us at the address above via the United States Postal Service.

United States Postal Service

Sorry We Missed You! We Tried to Deliver for You

Today's Date: 12-10

Sender's Name:

Item is at:
- ✓ Post Office *(See back)*

Available for Pick-up After
Date: 12-11 Time: 8:30

We will redeliver or you or your agent ca pick up. See reverse

- ✓ Letter
- Large envelope, magazine, catalog, etc.
- Parcel
- Restricted Delivery
- Perishable Item
- Other:

For Delivery: *(Enter total number of items delivered by service type)*

For Notice Left: *(Check applicable item)*

- Express Mail *(We will attempt to deliver on the next delivery day unless you instruct the post office to hold it.)*
- ✓ Certified
- Recorded Delivery
- Firm Bill
- Registered
- Insured
- Return Receipt for Merchandise
- Delivery Confirmation
- Signature Confirmation

☐ If checked, you or your agent must be present at time of delivery to sign for item

Article Number(s)

7001 0360 0002 0065 9855

Notice Left Section

Customer Name and Address

DUBOIS

1322 FLINCHESTER

Article Requiring Payment

☐ Postage Due ☐ COD ☐ Customs

Amount Due: $

☐ **Final Notice:** Article will be returned to sender on

Delivered By and Date

PS Form **3849**, November 1999

Delivery Notice/Reminder/Rece

A-88

A-89

› will redeliver OR you or your agent can pick up your mail at the post office. *(Bring this form and proper*
If your agent will pick up, sign below in item 2, and enter agent's name here):

a. Check all that apply in section 3;
b. Sign in section 2 below;
c. Leave this notice where the carrier can see it.

JUNCTION CITY KS, POSTMASTER
302 W 7TH ST JUNCTION CITY KS 66441-9998
HOUR: 8:30 AM- 4:30 PM MON THRU FRI
HOUR: 9:00 AM- 12:00 NOON SAT
PHONE: (785) 762-2101

ign Here to Authorize Redelivery or
e Authorize an Agent to Sign for You:

Delivery Section

Signature X	
Printed Name	
Delivery Address	1322 Elmcreek

☐ Redeliver *(Enter day of week.):*

(Allow at least two delivery days for redelivery, or call your post office to arrange delivery.)

☐ Leave item at my address

(Specify where to leave. Example: "porch", "side door". This option is not available if box is checked on the front requiring your signature at time of delivery.)

☐ Refused

USPS

5293 0204 0703 5316

Form **3849,** November 1999 *(Reverse)*

A-90

CERTIFIED MAIL

Bastine and Associates
12603 Southwest Freeway, Ste 571
Stafford, Texas 77477

7001 0360 0000 6598 5752

$5.21º
US POSTAGE
FIRST-CLASS
FROM 77477
DEC 05 2007
Stamps
.com
062S0000875910

Ms Jacqueline Du bois [sic]
1322 Elm Creek Dr
Junction City KS 66441-9033

1st NOTICE 12-10
2nd NOTICE 12-17
Returned 12-26
12-10-07
D

RR3KA

BASTINE & ASSOCIATES
ATTORNEY AND COUNSELOR AT LAW

12603 Southwest Freeway•Suite 571
Stafford, Texas 77477
OFFICE (281) 240-7979•FAX (281) 240-7929

December 5, 2007

Ms. Jacqueline Dubois
1322 Elm Creek Drive
Junction City, KS 66441

Re: Cause No. 2002-21145, In the Interest of
A. E. W., In the 257th Judicial District Court

Dear Ms. Dubois

Please be advised the continuation of the Temporary Orders hearing is set for December 12,2007 at 9:00 am in the 257th Judicial District Court at 1115 Congress, Houston, Texas.

If you have any questions regarding this setting please do not hesitate to contact my office. It is also my understanding that the Amicus has a setting on that day as well for a Security Deposit for Cost.

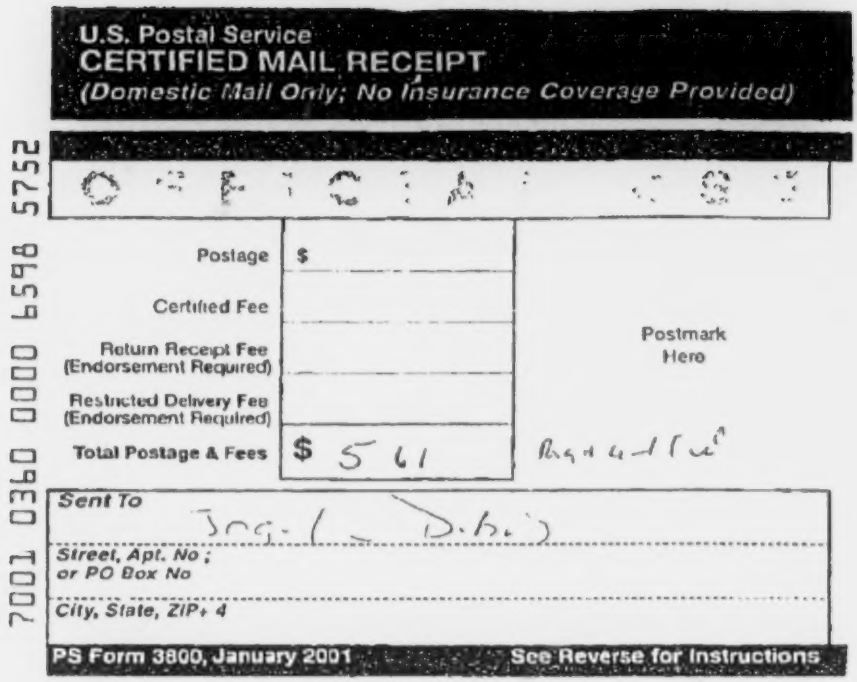
Thank you for your time and attention to this matter.

Very truly yours,

Ronique J. Bastine

P 1

A-92



U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 0360 0000 6598 5752

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 5 61

Postmark Here

Sent To
Street, Apt. No.; or PO Box No
City, State, ZIP+ 4

PS Form 3800, January 2001 See Reverse for Instructions

Texas Southern University » Office of Academic Affairs » Thurgood Marshall School of Law » Communications » News
News

TMSL Alumnus Appointed to 312th Judicial District Court

December 2007

Governor Rick Perry appointed **TMSL Alumnus David D. Farr** as the 312th Judicial District Court Judge, replacing Judge James D. Squier of Houston. Farr currently serves as an associate judge of the 257th Judicial District Court, representing Harris County. A member of the Houston Bar Association and the State Bar of Texas, Military Law and Family Law sections, Farr is board certified in Family Law. Farrs educational background includes a bachelors degree from Texas A&M University and a law degree from Thurgood Marshall School of Law.

http://www.tsu.edu/pages/2141.asp